



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 10, 2003	October 29, 2003
10	Friday, October 24, 2003	November 12, 2003
11	Friday, November 7, 2003	November 26, 2003

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

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The Administrative Rules Review Committee will hold a special meeting on Monday, October 13, 2003, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Department organization, adopt ch 1; rescind 401—ch 1, 471—ch 1,
581—19.1, Notice **ARC 2788B**, also Filed Emergency **ARC 2780B** 9/17/03
- Petitions for rule making, adopt ch 5; rescind 401—ch 18, 471—ch 3,
581—19.14, Notice **ARC 2803B** 10/1/03
- Agency procedure for rule making, adopt ch 6; rescind 401—ch 19, 471—ch 4,
581—ch 31, Notice **ARC 2804B** 10/1/03
- Declaratory orders, adopt ch 8; rescind 401—ch 17, 471—ch 5,
581—19.2 to 581—19.13, Notice **ARC 2805B** 10/1/03
- Customer councils, adopt ch 10, Filed **ARC 2777B** 9/17/03
- Chapters transferred from general services department[401] to administrative
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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Whitetail deer hunting preserves; mule deer, farm deer, adopt ch 57; 64.104, 64.106(1), 64.109, 64.119,
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- Workforce training and economic development funds, adopt ch 9, Notice **ARC 2754B** 9/17/03
- Housing fund, ch 25, Notice **ARC 2591B**, Terminated **ARC 2749B** 9/17/03
- Endow Iowa grants program, adopt ch 46, Notice **ARC 2753B** 9/17/03
- Endow Iowa tax credits, adopt ch 47, Notice **ARC 2797B** 10/1/03
- Self-employment loan program; targeted small business financial assistance program,
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57.48(1), 58.52(1), 62.23(22)“a,” 63.46(1), Notice **ARC 2825B** 10/1/03

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

- Audited financial reports, 5.24(3), 5.25(2), 5.25(4)“f,” 5.25(5), 5.25(6), Notice **ARC 2796B** 10/1/03
- Actuarial opinion and memorandum, 5.34, Notice **ARC 2794B** 10/1/03
- Iowa FAIR plan, 20.41 to 20.60, Notice **ARC 2801B** 10/1/03
- 2001 CSO mortality table, 42.6, 44.6, 47.7, adopt ch 91, Notice **ARC 2795B** 10/1/03
- Uniform prescription drug information card, adopt ch 78,
Filed Emergency **ARC 2743B** 9/17/03

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]“umbrella”

- State housing trust fund, adopt ch 19, Notice **ARC 2827B** 10/1/03

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

- Elevators, 71.1, 71.2(1), 71.2(1)“a” to “d,” 71.2(2)“c,” 71.2(2)“c”(4), 71.2(4) to 71.2(6),
71.3, 71.5(2), 71.5(3)“a,” 71.5(4) to 71.5(8), 71.7, 72.1, 72.1(1) to 72.1(6), 72.2 to 72.6,
72.8 to 72.15, 72.18 to 72.23, 73.1, 73.7(5), 73.8(1), 75.1 to 75.3, 75.6 to 75.8,
76.1, 76.3 to 76.5, 76.6(7), 76.7, Notice **ARC 2831B** 10/1/03

LOTTERY AUTHORITY, IOWA[531]

- General operation of the lottery; purchasing; administrative procedures; waivers;
prizes; licensing; scratch tickets; pull-tabs; computerized games,
adopt chs 1 to 6, 11 to 14, 18 to 20; rescind 705—chs 1 to 8, 11, 13, 14,
Notice **ARC 2770B**, also Filed Emergency **ARC 2771B** 9/17/03

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Fee increases for renewal and reinstatement of permanent physician licenses,
8.4(1)“c” and “g,” 9.11(3)“a,” 9.13(1)“a,” Filed Emergency After Notice **ARC 2762B** 9/17/03
- Convenience fee for on-line renewal of license,
8.4(1)“c,” Filed Emergency After Notice **ARC 2763B** 9/17/03

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- State parks and recreation areas, 61.4(1)“c,” 61.4(1)“g”(2), 61.4(1)“h”(3) and (6) to (10),
61.6(1) to 61.6(4), 61.9(6) to 61.9(22), Notice **ARC 2819B** 10/1/03

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Newsletter; public records, 1.3(6) 1.4, 11.2(4)“b”(3), 11.4, 11.5, Filed **ARC 2830B** 10/1/03
- Nursing education curriculum, 2.11(3), Notice **ARC 2829B** 10/1/03
- Registration fee for advanced registered nurse practitioners, 3.1, Notice **ARC 2828B** 10/1/03

PROFESSIONAL LICENSING AND REGULATION DIVISION[193]

COMMERCE DEPARTMENT[181]“umbrella”

- Division newsletter, 1.9, Filed **ARC 2802B** 10/1/03

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Physical and occupational therapy examiners, ch 199, 199.4(2), 199.4(3), 199.6(3), 199.6(4),
ch 200, 200.1, 200.3(1)“c” and “d,” 200.4(4), 200.4(5), 200.5(1)“a,” 200.7(2), 200.7(2)“a,”
200.7(6), 200.9, 200.12 to 200.14, chs 201, 202, 204.1(6) to 204.1(10), Notice **ARC 2745B** 9/17/03
- Physical and occupational therapy examiners, 205.4(2), 205.4(3), 205.6(3), 205.6(4),
206.1, 206.8(2) to 206.8(5), 206.12, 206.15 to 206.17, chs 208 to 210,
210.1(5) to 210.1(9), Notice **ARC 2746B** 9/17/03
- Psychology examiners, 239.4(2), 239.4(3), 239.6(3), 239.6(4), 240.15, 240.16,
ch 242, Filed **ARC 2744B** 9/17/03

PUBLIC HEALTH DEPARTMENT[641]

- Early hearing detection and intervention, adopt ch 3, Notice **ARC 2820B** 10/1/03
- Birth defects institute, 4.2, 4.3(1), 4.3(3), 4.3(4)“a”(4), 4.3(7)“c”(3), 4.3(8)“b,”
4.6, 4.6(4) to 4.6(6), 4.7(6)“b,” Filed **ARC 2824B** 10/1/03
- Immunizations of persons attending elementary or secondary schools
or licensed child care centers, 7.1, 7.3(1), 7.3(2), 7.4(6), 7.5, 7.6(1),
7.7(2), 7.9 to 7.11, Filed **ARC 2823B** 10/1/03
- Addition of varicella vaccine to list of immunizations required
for enrollees in licensed child care centers or elementary
and secondary schools, 7.4(5), 7.4(6)“e,”
Filed **ARC 2822B** 10/1/03
- Shipment of low-level radioactive waste—fee, 38.8(11)“a”(3),
38.8(11)“c,” Notice **ARC 2821B** 10/1/03

REVENUE DEPARTMENT[701]

- Amendments necessitated by transfer of finance duties to administrative services department,
5.14(4), 43.3(3) to 43.3(5), 49.7(3), 67.22, ch 150 title, 150.1 to 150.17,
Notice **ARC 2767B** 9/17/03
- Tax benefits and exemptions related to military service, 39.12, 40.61 to 40.64,
41.5(10), 52.1(6)“f,” Notice **ARC 2834B** 10/1/03
- Investment tax credits, 42.2(10), 52.10(4), 52.14, Notice **ARC 2769B** 9/17/03
- Eligible housing business tax credits; property rehabilitation tax credits, 42.13,
42.15(4), 42.15(6), 52.15, 52.18(4), 52.18(6), 58.8, 58.10, Notice **ARC 2768B** 9/17/03
- New capital investment program tax credits, 42.19, 52.22, 58.12, Notice **ARC 2832B** 10/1/03
- Motor fuel—definition of “nonterminal storage facility,” record keeping, tax rate for gasoline,
tax refund for fuel used for public purposes by benefited fire districts,
67.1, 67.3(9) to 67.3(13), 68.2(1), 68.8(20), 69.4(3), Notice **ARC 2833B** 10/1/03
- Property tax credits and exemptions, 78.6(1)“c,” 80.2(2)“c” and “t,”
80.7(8)“b,” Notice **ARC 2766B** 9/17/03

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

- Alternate energy purchase programs, 15.1, 15.17, 20.9(2)“b”(9), Filed **ARC 2772B** 9/17/03
- Eligible telecommunications carrier designation for wireless carriers,
39.2(5)“c,” 39.5, Notice **ARC 2773B** 9/17/03
- Iowa broadband initiative, adopt ch 43,
Summary of Regulatory Analysis and Amended Notice **ARC 2782B** 9/17/03

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Whitetail, mule and farm deer— hunting preserves, CWD monitoring, slaughtering, fees, ch 57; amendments to chs 64, 76 IAB 10/1/03 ARC 2790B (See also ARC 2791B herein)	Auditorium Wallace State Office Bldg. Des Moines, Iowa	October 22, 2003 7 p.m.
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DENTAL EXAMINERS BOARD[650]

Public health supervision by dentists, 10.5, 10.6 IAB 9/17/03 ARC 2783B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 16, 2003 10 a.m.
Monitoring nitrous oxide inhalation analgesia, 29.1, 29.6 IAB 9/17/03 ARC 2785B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	October 7, 2003 10 a.m.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Job retention program; workforce training and economic development program operating costs, 7.28 to 7.35, 20.19 IAB 9/17/03 ARC 2755B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 3 p.m.
Workforce training and economic development funds, ch 9 IAB 9/17/03 ARC 2754B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 1 p.m.
Endow Iowa grants program, ch 46 IAB 9/17/03 ARC 2753B	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 16, 2003 3 to 4 p.m.
Endow Iowa tax credits, ch 47 IAB 10/1/03 ARC 2797B	Main/ICN Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 24, 2003 3 to 4 p.m.

EDUCATION DEPARTMENT[281]

Administrative fee for instructional course for drinking drivers offered out of state, 21.33 IAB 9/17/03 ARC 2741B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 7, 2003 2 p.m.
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EDUCATION DEPARTMENT[281] (Cont'd)

Funding for children residing in state institutions or mental health institutes, ch 34 IAB 10/1/03 ARC 2835B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 23, 2003 3 to 5 p.m.
	Western Hills AEA 12 1520 Morningside Ave. Sioux City, Iowa	October 23, 2003 3 to 5 p.m.
	AEA 267 706 Cedar Heights Dr. Cedar Falls, Iowa	October 23, 2003 3 to 5 p.m.
Vocational education council; career academies, ch 47 IAB 10/1/03 ARC 2807B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 22, 2003 1 p.m.
Iowa public charter schools, ch 68 IAB 9/17/03 ARC 2740B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 10, 2003 3:30 to 5 p.m.
	1400 Second St. NW Elkader, Iowa	October 10, 2003 3:30 to 5 p.m.
	9184 B 265th St. Clear Lake, Iowa	October 10, 2003 3:30 to 5 p.m.
	St. Edmond High School 501 N. 22nd St. Fort Dodge, Iowa	October 10, 2003 3:30 to 5 p.m.
	Halverson Ctr. 24997 Hwy 92 Council Bluffs, Iowa	October 10, 2003 3:30 to 5 p.m.
	4401 Sixth St. SW Cedar Rapids, Iowa	October 10, 2003 3:30 to 5 p.m.
	DMACC, Carroll Campus 906 N. Grant Rd. Carroll, Iowa	October 10, 2003 3:30 to 5 p.m.
	3601 West Avenue Rd. Burlington, Iowa	October 10, 2003 3:30 to 5 p.m.
	1520 Morningside Ave. Sioux City, Iowa	October 10, 2003 3:30 to 5 p.m.
	Marshalltown High School 1602 S. Second Ave. Marshalltown, Iowa	October 10, 2003 3:30 to 5 p.m.
	Cedar Falls High School 1015 Division St. Cedar Falls, Iowa	October 10, 2003 3:30 to 5 p.m.
	1382 Fourth Ave. NE Sioux Center, Iowa	October 10, 2003 3:30 to 5 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

	Scott Community College 500 Belmont Rd. Bettendorf, Iowa	October 10, 2003 3:30 to 5 p.m.
	Indian Hills Community College Bldg. 1, 525 Grandview Ave. Ottumwa, Iowa	October 10, 2003 3:30 to 5 p.m.
	1405 N. Lincoln Creston, Iowa	October 10, 2003 3:30 to 5 p.m.
	Sentral Jr.-Sr. High School 308 310th St. Fenton, Iowa	October 10, 2003 3:30 to 5 p.m.
Regional academies—minimum weighting, maximum funding, 97.1, 97.4 IAB 10/1/03 ARC 2809B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 22, 2003 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Small unit exemption, 22.1(2) IAB 9/17/03 ARC 2775B	East Conference Room 7900 Hickman Rd. Urbandale, Iowa	October 7, 2003 1 p.m.
Drinking water program; operator and laboratory certification, amendments to chs 40 to 44, 81, 83 IAB 9/17/03 ARC 2779B	Conference Room Public Library 507 Poplar Atlantic, Iowa	October 7, 2003 10 a.m.
	Delaware County Community Center 200 E. Acres Manchester, Iowa	October 8, 2003 10 a.m.
	Helen Wilson Gallery Public Library 120 E. Main Washington, Iowa	October 10, 2003 10 a.m.
	Muse-Norris Conference Ctr, NIACC 500 College Dr. Mason City, Iowa	October 13, 2003 10 a.m.
	Conference Room, Suite I 401 SW Seventh St. Des Moines, Iowa	October 14, 2003 10 a.m.
	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	October 15, 2003 10 a.m.
Water quality standards, 61.2, 61.3, 62.8(2) IAB 9/17/03 ARC 2776B	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	October 7, 2003 2 p.m.
	City Hall Meeting Room 400 Claiborne Dr. Decorah, Iowa	October 9, 2003 7 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	October 10, 2003 1 p.m.
Community Center 530 W. Bluff St. Cherokee, Iowa	October 13, 2003 11 a.m.
Public Library Meeting Room A 123 S. Linn St. Iowa City, Iowa	October 15, 2003 11 a.m.
Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 17, 2003 1 p.m.

GROW IOWA VALUES BOARD[264]

Grow Iowa values fund financial assistance; university and college financial assistance program; organization and structure; uniform rules, amend chs 1, 3; adopt chs 2, 4, 51 to 55 IAB 9/17/03 ARC 2747B	Main Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 8, 2003 3 to 5 p.m.
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HUMAN SERVICES DEPARTMENT[441]

FIP diversion program, amendments to ch 47 IAB 10/1/03 ARC 2816B	Second Floor Conference Room 126 S. Kellogg St. Ames, Iowa	October 23, 2003 3 to 6 p.m.
	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	October 23, 2003 9:30 to 11:30 a.m.
	ICN Room 417 E. Kanessville Blvd. Council Bluffs, Iowa	October 22, 2003 1:30 p.m.
	Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	October 23, 2003 10 a.m.
	Conference Room 102 City View Plaza 1200 University Ave. Des Moines, Iowa	October 22, 2003 9 a.m.
	Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	October 23, 2003 10 a.m.
	First Floor Conference Rooms A & B Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	October 22, 2003 1 p.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

Room 220, Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	October 23, 2003 10 a.m. to 12 noon
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Choice of physician and pharmacy, 57.47, 58.51, 62.23, 63.45, 65.25 IAB 10/1/03 ARC 2826B	Conference Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 24, 2003 10 a.m.
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INSURANCE DIVISION[191]

Qualifications of independent certified public accountant, 5.24(3), 5.25 IAB 10/1/03 ARC 2796B	330 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.
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Actuarial opinion and memorandum, 5.34 IAB 10/1/03 ARC 2794B	330 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.
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Iowa FAIR Plan, 20.41 to 20.60 IAB 10/1/03 ARC 2801B	330 Maple St. Des Moines, Iowa	October 23, 2003 10 a.m.
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2001 CSO Mortality Table, 42.6, 44.6, 47.7; adopt ch 91 IAB 10/1/03 ARC 2795B	330 Maple St. Des Moines, Iowa	October 21, 2003 10 a.m.
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IOWA FINANCE AUTHORITY[265]

State housing trust fund, ch 19 IAB 10/1/03 ARC 2827B (ICN Network)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Room 101 St. Edmond High School 501 N. 22nd St. Fort Dodge, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Room 3, Continuing Ed. Bldg. Iowa Western Community College - 3 2700 College Rd. Council Bluffs, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Room 211, Southwestern Comm. Coll. 1501 W. Townline Rd. Creston, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Kimberly Center 1002 W. Kimberly Davenport, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	October 21, 2003 1:30 to 3:30 p.m.
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IOWA FINANCE AUTHORITY[265] (Cont'd)
(ICN Network)

Newman Catholic High School 2445 19th SW Mason City, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Videoconferencing and Training Ctr. Indian Hills Community College 651 Indian Hills Dr. Ottumwa, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Room 921, Bldg. A Western Iowa Tech. Community Coll. 4647 Stone Ave. Sioux City, Iowa	October 21, 2003 1:30 to 3:30 p.m.
Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	October 21, 2003 1:30 to 3:30 p.m.

LABOR SERVICES DIVISION[875]

Elevators, amendments to chs 71 to 73, 75, 76 IAB 10/1/03 ARC 2831B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	October 21, 2003 1:30 p.m.
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LOTTERY AUTHORITY, IOWA[531]

General, adopt chs 1 to 6, 11 to 14, 18 to 20; rescind 705—chs 1 to 8, 11, 13, 14 IAB 9/17/03 ARC 2770B (See also ARC 2771B)	2015 Grand Ave. Des Moines, Iowa	October 10, 2003 9 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

State parks and recreation areas, 61.4, 61.6, 61.9 IAB 10/1/03 ARC 2819B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 21, 2003 1:30 p.m.
Fishing regulations, 81.1, 81.2 IAB 9/3/03 ARC 2730B	Board of Supervisors Room Clinton County Administrative Bldg. 1900 N. Third Clinton, Iowa	October 1, 2003 7 p.m.
Permissive catch on Missouri River, 82.2(1) IAB 9/3/03 ARC 2731B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 7, 2003 1 p.m.
Taking and possession of mussels for sport, 87.2 IAB 9/3/03 ARC 2729B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 7, 2003 1:30 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Physical therapists, amendments to chs 199 to 202, 204 IAB 9/17/03 ARC 2745B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 9, 2003 9 to 11 a.m.
Occupational therapists, amendments to chs 205, 206, 208 to 210 IAB 9/17/03 ARC 2746B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 9, 2003 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Early hearing detection and intervention, ch 3 IAB 10/1/03 ARC 2820B (ICN Network)	ICN Conference Room, Third Floor Ola Babcock Miller Bldg. Des Moines, Iowa	October 21, 2003 10 to 11 a.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	October 21, 2003 10 to 11 a.m.
	Schindler 130A University of Northern Iowa 23rd St. and Hudson Rd. Cedar Falls, Iowa	October 21, 2003 10 to 11 a.m.
	Second Floor, Careers Bldg. Iowa School for the Deaf 1600 South Highway 275 Council Bluffs, Iowa	October 21, 2003 10 to 11 a.m.
	Room 157, Voc. Tech. Bldg. 501 E. Second Ottumwa, Iowa	October 21, 2003 10 to 11 a.m.
	Administration Office Iowa City Community School District 509 S. Dubuque St. Iowa City, Iowa	October 21, 2003 10 to 11 a.m.
	Room 300, Kahl Educational Center Eastern Iowa Community College 326 W. Third St. Davenport, Iowa	October 21, 2003 10 to 11 a.m.
	Room CB118, NIACC 500 College Dr. Mason City, Iowa	October 21, 2003 10 to 11 a.m.
Radioactive waste transport fee schedule, 38.8(11) IAB 10/1/03 ARC 2821B	Conference Room, Suite D 401 SW Seventh St. Des Moines, Iowa	October 21, 2003 8:30 a.m.

UTILITIES DIVISION[199]

Second payment agreements, 19.4(10), 20.4(11) IAB 9/3/03 ARC 2724B	Hearing Room 350 Maple St. Des Moines, Iowa	November 6, 2003 10 a.m.
Temperature trigger for cold weather protections, 19.4(15), 20.4(15) IAB 10/1/03 ARC 2806B (See also ARC 2725B , IAB 9/3/03)	Hearing Room 350 Maple St. Des Moines, Iowa	October 28, 2003 10 a.m.
Eligible telecommunications carrier designation for wireless carriers, 39.2(5), 39.5 IAB 9/17/03 ARC 2773B	Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2003 10 a.m.
Iowa broadband initiative, ch 43 IAB 9/17/03 ARC 2782B (See also ARC 2620B , IAB 7/23/03)	Hearing Room 350 Maple St. Des Moines, Iowa	October 22, 2003 10 a.m.

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

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ARC 2803B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 18, “Petitions for Rule Making,” 471—Chapter 3, “Petitions for Rule Making,” and rule 581—19.14(17A,19A), “Petition for Rule Making,” and to adopt 11—Chapter 5, “Petitions for Rule Making,” Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate the uniform rules regarding petitions for rule making by rescinding the comparable rules adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services and adopting Chapter 5 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 3:30 p.m. on October 21, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, House File 534.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 18, 471—Chapter 3,** and rule **581—19.14(17A,19A).**

ITEM 2. Adopt the following new chapter:

CHAPTER 5

PETITIONS FOR RULE MAKING

11—5.1(17A) Petition for rule making.

5.1(1) Filing. Any person or agency may file a petition for adoption of rules or request for review of rules with the Administrative Services Department, Office of the Director, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the department. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ADMINISTRATIVE SERVICES DEPARTMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).

PETITION FOR
RULE MAKING

The petition must provide the following information:

a. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

b. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

c. A brief summary of petitioner's arguments in support of the action urged in the petition.

d. A brief summary of any data supporting the action urged in the petition.

e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.

f. Any request by petitioner for a meeting provided for by rule 5.4(17A).

5.1(2) Content. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

5.1(3) Denial. The director may deny a petition because it does not substantially conform to the required form.

11—5.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The director may request a brief from the petitioner or from any other person concerning the substance of the petition.

11—5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the director at the offices of the department.

11—5.4(17A) Department consideration.

5.4(1) Within 14 days after the filing of a petition, the department must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the department must schedule a brief and informal meeting between the petitioner and the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

5.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

the petition on the date when the department mails or delivers the required notification to the petitioner.

5.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, House File 534.

ARC 2804B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 19, "Agency Procedure for Rule Making," 471—Chapter 4, "Agency Procedure for Rule Making," and 581—Chapter 31, "Department Procedure for Rule Making," and adopt 11—Chapter 6, "Agency Procedure for Rule Making," Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate uniform rules on agency procedures for rule making by rescinding the chapters adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services and adopting Chapter 6 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 3:30 p.m. on October 21, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 19, 471—Chapter 4 and 581—Chapter 31.**

ITEM 2. Adopt the following **new** chapter:

CHAPTER 6**AGENCY PROCEDURE FOR RULE MAKING**

11—6.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

11—6.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section

17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment. Notwithstanding the foregoing, except as otherwise provided by law, the department may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

11—6.3(17A) Public rule-making docket.

6.3(1) Docket maintained. The department shall maintain a current public rule-making docket.

6.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the department for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

6.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any department determination with respect thereto;
- h. Any known timetable for department decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

11—6.4(17A) Notice of proposed rule making.

6.4(1) Contents. At least 35 days before the adoption of a rule, the department shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

6.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 6.12(2) of this chapter.

6.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the Administrative Services Department, Office of the Director, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319.

11—6.5(17A) Public participation.

6.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

6.5(2) Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

- c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

6.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The director or another person designated by the director who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the director does not preside, the presiding officer shall prepare a memorandum for consideration by the director summarizing the contents of the presentations made at the oral proceeding unless the director determines that such a memorandum is unnecessary because the director will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the director at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

(6) The presiding officer may continue the oral proceeding at a later time without notice other than by announcement at the hearing.

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(7) Participants in an oral proceeding shall not be required to take an oath or submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

6.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

6.5(5) Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

11—6.6(17A) Regulatory analysis.

6.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

6.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the department’s small business impact list by making a written application addressed to the rules administrator. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

6.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time

the adopted rule is published in the Iowa Administrative Bulletin.

6.6(4) Qualified requesters for regulatory analysis—economic impact. The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“a” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

6.6(5) Qualified requesters for regulatory analysis—business impact. The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“b” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

6.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the department shall adhere to the time lines described in Iowa Code section 17A.4A(4).

6.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

6.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and (5).

6.6(9) Publication of a concise summary. The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

6.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“a,” unless a written request expressly waives one or more of the items listed in the section.

6.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

11—6.7(17A,25B) Fiscal impact statement.

6.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

6.7(2) If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

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11—6.8(17A) Time and manner of rule adoption.

6.8(1) Time of adoption. The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

6.8(2) Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

6.8(3) Reliance on agency expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

11—6.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

6.9(1) The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

6.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

6.9(3) The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

6.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

11—6.10(17A) Exemptions from public rule-making procedures.

6.10(1) Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to

the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

6.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

6.10(3) Public proceedings on rules adopted without them. The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 6.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

11—6.11(17A) Concise statement of reasons.

6.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Rules Administrator, Administrative Services Department, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

6.11(2) Contents. The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

6.11(3) Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

11—6.12(17A) Contents, style, and form of rule.

6.12(1) Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code

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section 17A.4(1)“b,” or the department in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1)“b,” or the department in its discretion decides to include such reasons; and

g. The effective date of the rule.

6.12(2) Incorporation by reference. The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the administrative services department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the administrative services department.

If the department adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

6.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why

publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

6.12(4) Style and form. In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

11—6.13(17A) Department rule-making record.

6.13(1) Requirement. The department shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

6.13(2) Contents. The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered by the chief information officer, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any department response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

6.13(3) Effect of record. Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

6.13(4) Maintenance of record. The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 6.13(2)“g,” “h,” “i,” or “j.”

11—6.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

11—6.15(17A) Effectiveness of rules prior to publication.

6.15(1) Grounds. The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

6.15(2) Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 6.15(2).

11—6.16(17A) General statements of policy.

6.16(1) Compilation, indexing, public inspection. The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f,” or otherwise authorized by law to be kept

confidential, the compilation must be made available for public inspection and copying.

6.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 6.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

11—6.17(17A) Review by department of rules.

6.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

6.17(2) In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, House File 534.

ARC 2805B

**ADMINISTRATIVE SERVICES
DEPARTMENT[11]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 17, “Declaratory Orders,” 471—Chapter 5, “Declaratory Orders,” and rules 581—19.2(19A) to 581—19.13(17A) and adopt 11—Chapter 8, “Declaratory Orders,” Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate uniform rules regarding declaratory orders by rescinding the comparable rules adopted by the former Departments of

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services and by adopting Chapter 8 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 3:30 p.m. on October 21, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, House File 534.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 17, 471—Chapter 5** and rules **581—19.2(19A) to 581—19.13(17A)**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 8
DECLARATORY ORDERS

11—8.1(17A) Petition for declaratory order. Any person may file a petition with the administrative services department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Administrative Services Department, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The administrative services department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ADMINISTRATIVE SERVICES DEPARTMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite the provisions of law involved).



PETITION FOR
DECLARATORY
ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be

affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by rule 8.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

11—8.2(17A) Notice of petition. Within 15 business days after receipt of a petition for a declaratory order, the administrative services department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 8.6(17A) to whom notice is required by any provision of law. The administrative services department may also give notice to any other persons deemed appropriate.

11—8.3(17A) Intervention.

8.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 8.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

8.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

8.3(3) A petition for intervention shall be filed with the administrative services department. Such a petition is deemed filed when it is received by the department. The administrative services department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ADMINISTRATIVE SERVICES DEPARTMENT

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite the provisions of law cited in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

11—8.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The administrative services department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

11—8.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the legal counsel for the Administrative Services Department, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319.

11—8.6(17A) Service and filing of petitions and other papers.

8.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

8.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director's Office, Administrative Services Department, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319, Attn: Legal Counsel. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

8.6(3) Method of service. Petitions for declaratory orders, petitions for intervention, and every document relating to such petitions shall be served upon the department and each known party simultaneously with their filing. The party filing a document is responsible for service on all parties.

Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

8.6(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Director's Office, Department of Administrative Services, Hoover State Office Building, Level A-South, Des Moines, Iowa 50319; delivered to an established courier service for immediate delivery to that office; or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

8.6(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United

States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

11—8.7(17A) Consideration. Upon request by petitioner, the administrative services department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the department to discuss the questions raised. The administrative services department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

11—8.8(17A) Action on petition.

8.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the department director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

8.8(2) The date of issuance of an order or of a refusal to issue an order shall be the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified in the order.

11—8.9(17A) Refusal to issue order.

8.9(1) The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the administrative services department to issue an order.

c. The administrative services department does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the question presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the administrative services department to determine whether a statute is unconstitutional on its face or whether any of the other conditions under Iowa Code section 17A.19 have been met.

k. The department will not issue declaratory orders on the following:

(1) Actuarial assumptions used or proposed to be used by the department;

(2) The impact of proposed legislation;

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

(3) Issues which require the disclosure of confidential information; or

(4) Items listed in 581—26.1(17A).

8.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

8.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

11—8.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of the issuance.

11—8.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

11—8.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the administrative services department, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, House File 534.

ARC 2790B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 189.13, and 2003 Iowa Acts, House File 624, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to adopt new Chapter 57, “Whitetail Deer Hunting Preserves,” and to amend Chapter 64, “Infectious and Contagious Diseases,” and Chapter 76, “Meat and Poultry Inspection,” Iowa Administrative Code.

The purpose of these proposed new rules and amendments is to implement 2003 Iowa Acts, House File 624, which transferred the regulation of whitetails and mule deer raised behind fences to the Department of Agriculture and Land Stewardship. The new rules and amendments deal with several issues including the regulation of whitetail deer hunting preserves, the registration of facilities where farm deer are maintained, changes to the Department’s chronic wasting disease program for farm deer, and the slaughtering of farm deer under inspection by the Meat and Poultry Bureau. The

rules also impose fees to cover the costs of the Department’s providing services and administering the programs.

The new whitetail deer hunting preserves rules are very similar to existing rules administered by the Department of Natural Resources relating to non-whitetail deer hunting preserves. Prior to enactment of 2003 Iowa Acts, House File 624, the Department of Natural Resources’ rules governed preserves that contained whitetail deer. The purpose of these new rules is to continue regulation of whitetail deer hunting preserves under Department of Agriculture and Land Stewardship jurisdiction in a similar manner.

The purpose of the amendments to the chronic wasting disease program is to incorporate whitetail deer and mule deer into the CWD monitoring program, require mandatory registration of all premises containing Cervidae, lower the age for test-eligible animals to those 16 months of age and older, and require participation in the CWD monitoring program for whitetail deer hunting preserves with some modifications.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on October 22, 2003. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

There will be a public hearing on Wednesday, October 22, 2003, at 7 p.m. in the Auditorium of the Henry Wallace Building, 502 E. 9th Street, Des Moines, Iowa.

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 2791B**. The content of that submission is incorporated by reference.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to these amendments.

These amendments are intended to implement Iowa Code chapters 163 and 189A, and 2003 Iowa Acts, House File 624.

ARC 2797B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 47, “Endow Iowa Tax Credits,” Iowa Administrative Code.

The proposed new rules implement the Endow Iowa Tax Credits Program as authorized by 2003 Iowa Acts, House File 683. The rules establish application procedures and evaluation criteria, form of award, and the contractual and compliance components of the program.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on October 24, 2003. Interested persons may submit written or oral comments by contacting

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Michael Johansen, Business Finance Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4870.

A public hearing to receive comments about the proposed new chapter will be held on October 24, 2003, from 3 to 4 p.m. at the above address in the main/ICN conference room.

These rules are intended to implement 2003 Iowa Acts, House File 683.

The following new chapter is proposed.

CHAPTER 47

ENDOW IOWA TAX CREDITS

261—47.1(80GA,HF683) Purpose. The purpose of endow Iowa tax credits is to encourage individuals, businesses, and organizations to invest in community foundations and to enhance the quality of life for citizens of this state through increased philanthropic activity.

261—47.2(80GA,HF683) Definitions.

“Act” means 2003 Iowa Acts, House File 683.

“Department” or “IDED” means the Iowa department of economic development.

“Endowment gift” means an irrevocable contribution to a permanent endowment held by a qualified community foundation.

“Permanent endowment fund” means a fund held in a qualifying community foundation to provide benefit to charitable causes in the state of Iowa. Endowed funds are intended to exist in perpetuity, and to implement an annual spend rate not to exceed 5 percent.

“Qualified community foundation” means a community foundation organized or operating in this state that meets or exceeds the national standards established by the National Council on Foundations.

“Tax credit” means the amount an individual may claim against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.

261—47.3(80GA,HF683) Allocation of funds. The department shall authorize tax credits to qualified individuals providing an endowment gift to a qualified community foundation for a permanent endowment fund within the state of Iowa in accordance with the following provisions:

47.3(1) Approved tax credits shall be allowed against taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.

47.3(2) Approved tax credits will be equal to 20 percent of a taxpayer’s endowment gift to a qualified community foundation.

47.3(3) The aggregate amount of tax credits authorized pursuant to this rule shall not exceed an aggregate total of \$2 million. The maximum amount of tax credits granted to a single taxpayer shall not exceed 5 percent of the aggregate amount of tax credits authorized. If the department receives applications for tax credits in excess of the aggregate amount available, the applications shall be prioritized by the date the department received the applications.

47.3(4) Any tax credit in excess of the taxpayer’s tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first.

47.3(5) A tax credit shall not be carried back to a tax year

prior to the tax year in which the taxpayer claims the tax credit.

47.3(6) A tax credit shall not be transferable to any other taxpayer.

47.3(7) Tax credits shall not be authorized pursuant to this rule after December 31, 2005.

261—47.4(80GA,HF683) Distribution process and review criteria. The department shall develop and make available a standardized application pertaining to the distribution of endow Iowa tax credits.

47.4(1) Ten percent of the aggregate amount available for tax credits shall be reserved for those permanent endowment gifts corresponding to the endow Iowa grants program. If by September 1, 2005, the entire 10 percent reserved for permanent endowment gifts corresponding to the endow Iowa grants program is not allocated, the amount remaining shall be available for other applicants.

47.4(2) Ten percent of the aggregate amount available for tax credits shall be reserved for those permanent endowment gifts totaling \$30,000 or less. If by September 1, 2005, the entire 10 percent reserved for permanent endowment gifts totaling \$30,000 or less is not allocated, the amount remaining shall be available for other applicants.

47.4(3) Applications will be accepted on an ongoing basis. The department will make public by June 1 and December 1 of each calendar year the total number of requests for tax credits and the total amount of requested tax credits that have been submitted. The department will review these requests and issue tax credits within a reasonable period of time following the June 1 and December 1 announcements.

261—47.5(80GA,HF683) Reporting requirements. By January 31 of each calendar year, the department shall publish an annual report of the activities conducted pursuant to these rules during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include a detailed listing of endow Iowa tax credits authorized by the department.

These rules are intended to implement 2003 Iowa Acts, House File 683.

ARC 2798B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Termination

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby terminates further rule-making proceedings under the provisions of Iowa Code section 17A.4(1)“b” for proposed rule making relating to Chapter 53, “Community Economic Betterment Program,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2752B**.

The proposed amendments to subrule 53.6(1) would have increased the wage threshold requirements to be eligible for assistance. To be eligible, project jobs would have been required to have a starting wage equal to or exceeding 100 percent of the average county wage, 100 percent of the average regional wage, or the annual wage cap, whichever is lowest, and over 50 percent of the pledged jobs must have been at or above the 100 percent level or the annual wage cap, whichever

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

er is lower. These changes were intended to assist the Department in meeting the legislature's mandate to the Department in 2003 Iowa Acts, House File 692, to raise the average wage of Iowans.

This Notice of Intended Action is being terminated to allow additional time to determine if the wage threshold level for the CEBA program should be changed.

The IDED Board approved this Notice of Termination on September 11, 2003.

ARC 2835B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to adopt Chapter 34, “Funding for Children Residing in State Institutions or Mental Health Institutes,” Iowa Administrative Code.

This proposed chapter establishes procedures for funding the provision of appropriate educational services for children residing in the Mental Health Institutes at Cherokee and Independence, the Iowa Juvenile Home at Toledo, and the State Training School at Eldora as required by 2003 Iowa Acts, Senate File 453.

A public hearing will be held on October 23, 2003, from 3 until 5 p.m. on the Iowa Communications Network at the following locations:

Grimes State Office Building
ICN Room, Second Floor
Des Moines, Iowa
(origination site)

Western Hills Area Education Agency 12
1520 Morningside Avenue
Sioux City, Iowa

Area Education Agency 267
706 Cedar Heights Drive
Cedar Falls, Iowa

Individuals may present their views either orally or in writing during the public hearing. If the services of an interpreter are required or an interested individual wishing to attend the public hearing has special needs, notification should be provided to the Department at least one week prior to the public hearing.

Written comments will be accepted until November 5, 2003, and may be directed to Jim Clark, Administrative Consultant, Bureau of Children, Family and Community Services, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. Comments may also be E-mailed to jim.clark@ed.state.ia.us.

The proposed chapter is available for public review on the Iowa Department of Education's Web site at <http://www.state.ia.us/educate>.

These rules are intended to implement 2003 Iowa Acts, Senate File 453.

The following **new** chapter is proposed.

CHAPTER 34**FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS OR MENTAL HEALTH INSTITUTES**

281—34.1(218) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in the following institutions under the jurisdiction of the director of human services: the Mental Health Institute, Cherokee, Iowa; the Mental Health Institute, Independence, Iowa; the State Training School, Eldora, Iowa; and the Iowa Juvenile Home, Toledo, Iowa.

281—34.2(218) Definitions. For the purposes of these rules, the following definitions shall apply:

“AEA” means an area education agency.

“Aggregate days” means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the institution and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the institution or receives a high school diploma or its equivalent, whichever occurs first.

“Average daily attendance” or “ADA” means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter shall be calculated on the regular school year exclusive of summer session.

“Department” means the state department of education.

“Individualized education program” or “IEP” means the written record of an eligible individual's special education and related services developed in accordance with 281—Chapter 41. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual's special learning needs. There is one IEP which specifies all the special education and related services for an eligible individual.

“Institution” means the Mental Health Institute, Cherokee, Iowa; the Mental Health Institute, Independence, Iowa; the State Training School, Eldora, Iowa; and the Iowa Juvenile Home, Toledo, Iowa.

“Proposed educational program” means a written description of the general education program, special education services, transition activities, and summer school programs that are proposed to be implemented in order to provide appropriate educational services for each child residing in an institution.

“Proposed educational program budget” means a document that outlines the costs for providing the proposed educational program as defined in these rules.

“Regular school year” means the number of days that school is in session, not to exceed 180 days. The regular school year for each institution shall begin on the first day of school established by the school district in which each institution is located.

“School-age pupil” means a student who is a resident of the state of Iowa and who is at least 5 years of age but less than 21 years of age on September 15 of the school year, or a younger age if served pursuant to an IEP.

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“School district of the child’s residence” means the school district in which the parent or guardian of the child resides or as defined under operation of law.

“Student contact days” means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

“Transition” means communication between the institution and the child’s district of residence to develop a plan for assisting the child to adjust to school in the district of residence upon the child’s return. Planning for support and follow-up includes contacts with the child’s district of residence, community agencies, and the AEA when needed.

281—34.3(218) General principles.

34.3(1) Availability. All children who reside in state institutions and mental health institutes shall be provided appropriate educational services in accordance with these rules. Special education services to eligible individuals in institutions shall be provided in accordance with 281—Chapter 41.

34.3(2) Responsibility of institutions. It is the responsibility of institutions to provide or make provision for appropriate educational services to children residing in these institutions and to ensure appropriate transition of children back to the school district of residence. The institution may make provision by contracting with the AEA or the school district in which the institution is located.

34.3(3) Basis for funding. Funding for general education programs at the institutions is determined using a formula similar to the formula used for the determination of funding for local school districts while considering the unique setting of the institutions. The amount of special education funding is determined by comparing the structure of the general education program at each institution to the nature and extent of services required for students with special education needs beyond what is provided to all students by the general education program.

34.3(4) Responsibility of the AEA. It is the responsibility of the AEA in which the institution is located to provide media services, educational services, and special education support services. The nature and extent of these services shall be comparable to those provided to school districts in the AEA.

281—34.4(218) Notification.

34.4(1) Students served at mental health institutes. The Mental Health Institute, Cherokee, Iowa, and the Mental Health Institute, Independence, Iowa, shall notify the district of residence of each child who on the third Friday in September is residing in these institutions. The notification shall occur on or after the third Friday in September and on or before the fourth Friday in September and shall be in writing or in a printable electronic medium. The notification shall include the child’s name, birth date, and grade level and the names and addresses of the child’s parents or guardians.

34.4(2) Students served at the State Training School at Eldora and the Iowa Juvenile Home at Toledo. The State Training School at Eldora and the Iowa Juvenile Home at Toledo shall notify the AEA in which the institution is located and the district of residence of each child who on the third Friday in September is residing in these institutions if the child’s release date is known and the release date is within the current school year. The notification shall occur on or after the third Friday in September and on or before the fourth Friday in September. For students served pursuant to an IEP, the State Training School at Eldora and the Iowa Juvenile Home at Toledo shall by the last Friday in October also notify the AEA in which the institution is located and the district of residence of

each child residing in these institutions if the child’s release date is known and the release date is within the current school year. Notifications shall be in writing or in a printable electronic medium and shall include the child’s name, birth date, and grade level and the names and addresses of the child’s parents or guardians.

281—34.5(218) Program submission and approval. Educational programs shall be submitted, reviewed, modified, and approved using the following procedures:

34.5(1) Submission. Each institution shall submit a proposed educational program to the department of education and the department of human services by January 1 for the following school year. The proposed program shall be submitted on forms provided or in the manner prescribed by the department and shall include a description of the following:

a. The general education program including content standards, benchmarks, student learning goals and all other requirements of 281—Chapter 12.

b. Special education services including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.

c. Procedures that will be implemented to ensure the effective transition of each child back to the school district of the child’s residence.

34.5(2) Approval. The department shall review and approve or modify the proposed educational program by February 1 and communicate this action to each institution. The department shall also notify the department of revenue of its action by February 1.

281—34.6(218) Budget submission and approval. Educational program budgets shall be submitted, reviewed, modified, and approved using the following procedures:

34.6(1) Submission. Each institution shall submit a proposed educational program budget by January 1 for the following school year. The proposed budget shall be based on the average daily attendance of the children residing in the institution and shall be submitted to the department of education and the department of human services on forms provided by the department. The average daily attendance used for the proposed budget shall be the average daily attendance for the school year that ended the previous June 30.

34.6(2) Students not served pursuant to an IEP. The budget shall be calculated as the sum of the following:

a. Average daily attendance multiplied by the state cost per pupil for the budget year established pursuant to Iowa Code section 257.9.

b. Average daily attendance multiplied by the per pupil media services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

c. Average daily attendance multiplied by the per pupil educational services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

34.6(3) Students served pursuant to an IEP. The budget shall be calculated as the sum of the following:

a. Costs established pursuant to subrule 34.6(2) for students not served pursuant to an IEP.

b. Additional weighting established by the special education weighting plan pursuant to Iowa Code section 257.31, subsection 12, as appropriate to support the nature and extent of special education services provided pursuant to subrule 34.3(3).

c. Special education student count multiplied by the special education support cost per pupil funding established for

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the AEA in which the institution is located pursuant to Iowa Code section 257.9.

d. The State Training School at Eldora and the Iowa Juvenile Home at Toledo may include in their budgets an amount that represents the difference between the amount established pursuant to Iowa Code section 282.28 and approved by the department for the 2003-2004 fiscal year included in the fiscal year beginning July 1, 2003, and the amount each institution has budgeted under paragraph 34.6(3)"c." The budget amount shall increase annually by the allowable growth rate established for that year.

e. In addition to the amount each institution has budgeted as specified in paragraph 34.6(3)"c," the mental health institutes at Cherokee and Independence may include annually in their budgets an amount not to exceed \$200,000 based on the budget calculation specified in paragraph 34.6(2)"a." This budgeted amount may be adjusted to an amount that exceeds \$200,000 in circumstances when there is a significant increase in the number of students in attendance. This additional amount shall increase annually by the allowable growth rate established for that year.

34.6(4) Approval. The department shall review and approve or modify the proposed educational program budget by February 1 and communicate this action to each institution. The department shall also notify the department of revenue of its action by February 1.

281—34.7(218) Payments. The department of revenue shall pay the approved budget amount to the department of human services in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of revenue, taking into consideration the relative budget and cash position of the state's resources. The department of revenue shall pay the approved budget amount for the department of human services from the moneys appropriated under Iowa Code section 257.16, and the department of human services shall distribute the payment to each institution.

281—34.8(218) Payments to the AEA. Within ten days of receiving its payment, the institution shall pay to the AEA in which the institution is located one-tenth of the total funding included in its approved budget for AEA media services, educational services, and special education support services.

281—34.9(218) Contracting for services. The institution may contract with the AEA or the local school district in which the institution is located to provide services to the students residing in the institution.

281—34.10(218) Accounting for average daily attendance. Each institution shall keep a daily register that shall include the name, birth date, district of residence, attendance, and enrollment status of each student. At the end of the school year, each institution shall calculate the average daily attendance for students served pursuant to an IEP and the average daily attendance for students not served pursuant to an IEP. This information shall be reported with the accounting for the actual program costs submitted to the department by August 1.

281—34.11(218) Accounting for actual program costs. Each institution shall submit an accounting for the actual cost of the program to the department by August 1 of the following school year on forms provided by the department.

34.11(1) Instructional costs. Actual costs include salaries and benefits of instructional staff, instructional supplies and materials, professional development for instructional staff,

student transportation, contracted services related to instruction or instructional staff, and instructional equipment.

34.11(2) Administrative costs. Costs for administering the educational program may be included in actual costs based on the average daily attendance of students in the institution. Costs shall be limited to the salary and benefits of the full-time equivalent education administrators and clerical support for the instructional program. However, the full-time equivalent at any institution shall not exceed 1.0 for education administration and 1.0 for clerical support.

34.11(3) Unallowed costs. Costs shall not include expenditures for debt services or for facilities acquisition and construction services including remodeling and facility repair. Costs of residential, custodial, treatment, and similar services provided by the institution shall not be included in the actual costs. Costs provided for by a grant or other categorical aid shall not be included in the actual cost calculations pursuant to this chapter.

34.11(4) Summer school costs. Costs for providing summer school shall be reported separately from regular session costs. Except as approved by the department of education, summer session costs are considered to be included in the state cost per pupil, or as provided in an appropriation through the department of human services.

34.11(5) Instruction to nonresident students. Costs for providing instruction to students who are not residents of the state of Iowa shall be excluded from the actual cost calculations.

34.11(6) Maximum costs for students who are not served pursuant to an IEP. Actual costs for serving students who are not served pursuant to an IEP shall not exceed the greater of the actual average daily attendance for the school year multiplied by the state cost per pupil or the average daily attendance from the approved budget multiplied by the state cost per pupil.

34.11(7) Maximum costs for students served pursuant to an IEP. Actual costs for students served pursuant to an IEP shall not exceed the amount calculated in subrule 34.6(3).

34.11(8) Approval of expenditures. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to Iowa Code section 256.7, subsection 10, and shall notify the department of revenue of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of revenue to the department of human services and any differences added to or subtracted from the October payment made under these rules for the next school year.

281—34.12(218) Audit. Each institution shall make the records related to providing educational services to students residing within the institution available to independent auditors, state auditors and department of education staff upon request.

281—34.13(218) Hold harmless provision. Notwithstanding rule 281—34.6(218), any institution that would receive less funding in its proposed budget pursuant to these rules for the instructional program for the 2003-2004 school year than it had received in funding for the instructional program for the 2002-2003 school year shall be held harmless. The institution shall receive an amount equal to the amount it was funded in 2002-2003. This provision shall continue until the first year in which the proposed budget pursuant to these rules would equal or exceed the amount it had received for the instructional program for the 2002-2003 school year. The hold-harmless provision shall cease beginning with the first year in which

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the proposed budget pursuant to these rules equals or exceeds the 2002-2003 funding amount.

281—34.14(218,256B,34CFR300) AEA services. Each institution shall purchase from the AEA in which the institution is located support, related and other services necessary to provide appropriate educational programs to students requiring special education, and payment for the purchased services shall be made in accordance with rule 281—34.8(218). The nature and extent of such services shall be comparable to those provided to school districts in the AEA.

These rules are intended to implement 2003 Iowa Acts, Senate File 453.

ARC 2807B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to rescind Chapter 47, "Vocational Education Council," and adopt new Chapter 47, "Career Academies," Iowa Administrative Code.

The current chapter is being rescinded because the Vocational Education Council no longer exists. The new chapter regarding career academies is being proposed in accordance with 2003 Iowa Acts, House File 683, section 76.

Any interested person may submit oral or written comments on or before October 22, 2003, by addressing comments to Beverly Bunker, Administrative Consultant, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3615; E-mail beverly.bunker@ed.state.ia.us; fax (515)281-6544.

A public hearing will be held on October 22, 2003, at 1 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Individuals with special needs may contact the Department prior to the hearing if accommodations need to be made.

These rules are intended to implement 2003 Iowa Acts, House File 683, sections 76 through 80.

The following amendment is proposed.

Rescind 281—Chapter 47 and adopt the following **new** chapter in lieu thereof:

CHAPTER 47
CAREER ACADEMIES

281—47.1(260C) Definitions. For purposes of these rules, the following definitions shall apply:

"Articulation" means a process of curriculum alignment, linking the secondary and postsecondary levels; the process identifies competencies required at each level, which are consistent with specific occupational levels. The process requires signed agreements between the secondary and post-

secondary levels in order to facilitate student transition to the postsecondary level and reduce curricular duplication. Articulation is an ongoing process that requires regular review and renewal.

"Associate degree," "diploma" and "certificate" in a vocational, career and technical education program are as defined in 281—subrule 21.2(10).

"Career academy" means a program of study that combines a minimum of two years of secondary education with an associate degree in a career preparatory program. A diploma or certificate may be provided as options within the associate degree program. The career academy is a program of study that is nonduplicative, sequential, and ensures that the course of study is skill standards-based, integrates academic and technical instruction, utilizes work-based and work site learning where appropriate and available, utilizes an individual career planning process with parent involvement, and prepares an individual for entry and advancement in a high-skill and rewarding career field as specified in 2003 Iowa Acts, House File 683, section 76. A career academy may include articulation of the community college associate degree to a baccalaureate degree. "Nonduplicative" means that the postsecondary component of the career academy is not currently offered at a participating secondary school.

The career academy should strengthen the academic component of career and technical education through the integration of academic, and career and technical education; build student competence in mathematics, science, and communications in a coherent sequence of courses; and lead to an associate degree that prepares an individual for entry and advancement in a high-skill and rewarding career field that may include further education.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Skill standard" means a description of the work to be performed, how well the work must be performed and the level of knowledge and skill required to perform that work. Skill standards are developed by industry, which includes businesses, labor unions, and employee and employer organizations, in cooperation with educators.

"Work-based learning" is defined as planned and supervised connections of classroom, laboratory and work experiences that prepare students for current and future careers in a highly technical workplace. Work-based learning experiences provide students the opportunity to develop and apply knowledge, technical skills, and employability behaviors through structured classroom and laboratory experiences.

"Work site learning" means a planned and supervised work experience for students. Work site learning may include industry tours, "job shadowing," paid and unpaid cooperative work experience programs and apprenticeship programs.

A work site component that is part of a career academy program must be in compliance with workplace laws and regulations, including the minimum wage requirements prescribed by Iowa law or the federal Fair Labor Standards Act. The program of study must also comply with state and federal laws pertaining to the workplace, including equal employment opportunity and accident and liability insurance requirements as described in 261—subrule 11.3(7).

281—47.2(260C) Career academy program of study.

47.2(1) Minimum requirements. A career academy must have operational policies related to a defined curriculum, credit provisions, sequence and locations of courses,

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and enrollment procedures. A career academy shall meet the following minimum requirements:

- a. Articulate two years of secondary education with an associate degree program, which may include a diploma or certificate;
- b. Ensure that the secondary and postsecondary components of the career preparatory program are nonduplicative;
- c. Identify a sequential course of study;
- d. Delineate skill standards specific to the industry;
- e. Integrate academic and technical instruction;
- f. Utilize work-based learning;
- g. Utilize work site learning where appropriate and available;
- h. Lead to an associate degree in a high-skill and rewarding career field;
- i. Provide for an individual career planning process, with parent or guardian involvement; and
- j. Include articulation of a community college associate degree or, if possible, a baccalaureate degree.

47.2(2) Career academy funding. Funding for a career academy is as specified in 2003 Iowa Acts, House File 683, section 76. The individual courses offered by a community college in a career academy may be funded additionally through a variety of state and federal sources. Nothing in these rules relieves secondary and postsecondary institutions of their obligations to meet other funding requirements.

47.2(3) Vocational, career and technical program approval. The career academy program of study shall include both secondary and postsecondary curricula. A career academy program must meet requirements of the department of education as specified in Iowa Code sections 256.11(5)“h,” 258.3A, 258.4, and 260C.14. The career academy must be an articulated program of study between secondary and postsecondary institutions.

47.2(4) Contract or agreement. The career academy program of study must receive school district board and community college board approval. A contract or 28E agreement between the boards of a school district and a community college must be signed by participating parties and be in effect prior to initiation of a career academy. The contract or 28E agreement between the boards of the school district(s) and the community college must set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and must specify assurances that the career academy program of study is as defined in 2003 Iowa Acts, House File 683, section 76. The contract or 28E agreement shall include, but is not limited to, the following:

- a. The duration of the joint or cooperative undertaking;
- b. The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of Iowa Code sections 12B.10 through 12B.10C and other applicable law.
- c. The purpose or purposes of the joint or cooperative undertaking;
- d. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;
- e. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- f. The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

g. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking; and

h. Any other necessary and proper matters for the joint or cooperative undertaking.

The school district board and community college board must approve the contract or 28E agreement. An assurance form, as defined by the department of education, which specifies that the career academy includes all the components required under subrule 47.2(1) shall be sent to the director of the department of education.

47.2(5) Faculty requirements. Faculty providing college credit instruction in a career academy program of study must meet community college faculty minimum standards as specified in rule 281—21.3(260C) and the requirements of the quality faculty plan as approved by the community college board pursuant to Iowa Code section 260C.36. Faculty teaching courses that provide only secondary level credit must have appropriate secondary licensure pursuant to Iowa Code chapter 272.

47.2(6) Credit options. School districts may elect to offer high school credit for college credit courses within a career academy program. The career academy program of study shall be designed so that a student who utilizes the program will graduate from high school with the class in which the student was enrolled.

47.2(7) Data collection. Data collection and enrollment reporting must follow specified requirements as determined by the department of education.

These rules are intended to implement 2003 Iowa Acts, House File 683, sections 76 to 80.

ARC 2809B**EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 97, “Supplementary Weighting,” Iowa Administrative Code.

These amendments make minor wording changes, establish the procedures for school districts to generate minimum funding for students in an in-district regional academy, and set maximum funding for all districts hosting a regional academy. 2003 Iowa Acts, Senate File 458, adds a minimum weighting provision for hosting a regional academy and establishes maximum funding.

Any interested person may comment on the proposed amendments on or before October 22, 2003, by addressing comments to Su McCurdy, Administrative Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; su.mccurdy@ed.state.ia.us; fax (515)281-7700.

There will be a public hearing on October 22, 2003, at 3 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, at which persons may present their comments orally and in writing. At the hearing,

EDUCATION DEPARTMENT[281](cont'd)

persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department and advise of specific needs prior to October 8, 2003.

These amendments are intended to implement Iowa Code section 257.11 as amended by 2003 Iowa Acts, Senate File 458.

The following amendments are proposed.

ITEM 1. Amend rule **281—97.1(257)**, definition of “regional academy,” as follows:

“Regional academy” shall mean an educational program established by a school district to which multiple school districts send students in grades ~~seven~~ *nine* through twelve. The curriculum shall include advanced-level courses and, in addition, may include vocational-technical ~~programs~~ *courses* and a virtual academy.

ITEM 2. Amend subrule **97.4(1)**, paragraph “c,” as follows:

c. The grade levels include one or more grades ~~seven~~ *nine* through twelve.

ITEM 3. Renumber subrule **97.4(4)** as **97.4(5)** and add the following **new** subrule:

97.4(4) Minimum weighting. The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ten additional pupils if the academy provides both advanced-level courses and vocational-technical courses.

ITEM 4. Amend rule **281—97.4(257)** by adding the following **new** subrule:

97.4(6) Maximum funding. If the sum of the funding amount calculated for all districts operating regional academies under this rule exceeds \$1 million for the school year beginning July 1, 2004, and each succeeding fiscal year, the director of the department of management shall prorate the amount calculated for each district. The proration shall be based upon the amount calculated for each district when compared to the sum of the amount for all districts.

ARC 2813B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment clarifies the following:

1. That a candidate’s committee shall appoint a treasurer who is an Iowa resident and at least 18 years of age and that the committee may appoint a chairperson who is not subject to residency or age requirements.

2. That all other committees shall appoint separate individuals to serve as treasurer and chairperson and that each shall be at least 18 years of age.

3. That, except for a candidate’s committee, each committee shall either appoint an Iowa resident as treasurer or maintain the committee’s funds in an Iowa financial institution.

The proposed amendment does not contain a waiver provision as the obligations are imposed by statute.

Any interested person may make written comments on the proposed amendment on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.3.

The following amendment is proposed.

Rescind subrule 4.4(1) and adopt the following **new** subrule in lieu thereof:

4.4(1) Committee officers. The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer. Each candidate’s committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. A candidate’s committee may also appoint a committee chairperson who is not limited by residency or age. Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. Except for a candidate’s committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee’s funds in bank accounts in a financial institution in Iowa.

ARC 2814B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment clarifies that, when a committee receives a campaign contribution by mail, the date of the contribution to be reported on a disclosure report is the date that the recipient physically opens the envelope. This policy was announced by the Board in IECDB Advisory Opinion 2000-13.

The proposed amendment does not contain a waiver provision, but would be subject to petitions for waiver under 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104,

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.14.

The following amendment is proposed.

Amend subrule 4.14(2) as follows:

4.14(2) Date of contribution—date received. The schedule shall include the complete date (month/day/year) *that* the contribution was physically received by a person on behalf of the committee. If the contribution is by check, the date of the contribution to be reported is the date the check is physically received by a person on behalf of a committee, even if this date is different from the date shown on the check. *For contributions received by mail, the date of the contribution to be reported shall be the date that the recipient physically opens the envelope.*

ARC 2812B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment permits a trust that makes a one-time contribution in excess of \$750 to a campaign committee the choice of filing a one-page form that registers a “political committee” and discloses the contribution in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution. The proposed amendment also clarifies technical language in the current rule.

The proposed amendment does not contain a waiver provision as the requirements are mandated by statute.

Any interested person may make written comments on the proposed amendment on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code sections 56.6(6) and 56.12.

The following amendment is proposed.

Rescind rule 351—4.31(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.31(56) Information required for a trust to avoid a contribution in the name of another person. A contribution to a committee by a trustee solely in the name of the trust constitutes a contribution in the name of another person as prohibited in Iowa Code section 56.12 unless the recipient committee publicly discloses the contribution as provided in this rule.

4.31(1) Living or revocable trust. If the contribution involves a trust identified as a revocable trust or a living trust that does not file a separate trust tax return and whose federal tax ID number is the same as the social security number of the grantor who creates the trust and who is also a trustee, the contribution shall be reported by the recipient committee as being made by the “(name) revocable (or living) trust.”

4.31(2) Other trusts. For a contribution involving a trust that does not qualify under subrule 4.31(1), the recipient committee shall identify the trust, the trustee, and the trustor.

4.31(3) Registering a committee. A trust, except for a living or revocable trust, that raises or spends more than \$750 for campaign activities shall register a political committee (PAC) and shall file disclosure reports. A trust, except for a living or revocable trust, that makes a one-time contribution in excess of \$750 may file Form DR-OTC in lieu of filing a statement of organization and filing disclosure reports.

This rule is intended to implement Iowa Code sections 56.6(6) and 56.12.

ARC 2810B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment requires the placement of the “paid for by” attribution statement on Web sites that expressly advocate the nomination, election, or defeat of a candidate or the passage or defeat of a ballot issue. This policy was announced by the Board in IECDB Advisory Opinion 2000-25.

The proposed amendment does not contain a waiver provision, but would be subject to petitions for waiver under 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.14.

The following amendment is proposed.

Amend subrule 4.42(2) as follows:

4.42(2) Items subject to requirement. In addition to those items specified by Iowa Code section 56.14(1)“b,” the requirement for an attribution statement is interpreted to apply to scratch pads and postcards because inclusion of the statement is not impracticable when other text is being printed, and the cost is not significantly increased by printing it. *The attribution statement shall also appear on any Web site that*

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

expressly advocates the election, nomination, or defeat of a clearly identified candidate or expressly advocates the passage or defeat of a clearly identified ballot issue. The attribution statement only needs to appear on the home page of the Web site.

ARC 2811B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment permits a candidate’s committee to use a computer owned by a corporate entity to generate and file a campaign disclosure report so long as the report does not expressly advocate the election or defeat of a candidate. This policy was announced in IECDB Advisory Opinion 2002-01. The Board’s rules already contain a similar provision for other types of committees.

The proposed amendment does not contain a waiver provision as no obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 56.15.

The following amendment is proposed.

Amend rule 351—4.46(56,68B) as follows:

351—4.46(56,68B) Voter education. These rules do not prevent a corporate entity from providing or publicizing voter registration procedures, election day information, voting procedures or other voter education information, so long as the information provided does not expressly advocate the election or defeat of a clearly identified candidate. *Also, these rules do not prevent a candidate’s committee from using a corporate computer to generate and file a campaign disclosure report so long as the report does not expressly advocate the election or defeat of a clearly identified candidate.*

This rule is intended to implement Iowa Code section 56.15.

ARC 2815B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to rescind Chapter 8, “Petitions for Rule Making,” and adopt new Chapter 8, “Executive Branch Lobbying,” and rescind Chapter 13, “Executive Branch Lobbyists,” and adopt new Chapter 13, “Petitions for Rule Making,” Iowa Administrative Code.

The proposed amendments incorporate the subject matter of current Chapter 8 in new Chapter 13 and of current Chapter 13 in new Chapter 8. The Board is in the process of placing similar subject matters together by chapter in the Board’s rules. The proposed amendments also reflect current Board policies, procedures, and statutory requirements.

The proposed amendments contain waiver provisions where applicable. Otherwise, all of the rules would be subject to petition for waiver under 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before October 21, 2003. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code chapter 68B and Iowa Code section 56.15A.

The following amendments are proposed.

ITEM 1. Rescind 351—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8

EXECUTIVE BRANCH LOBBYING

351—8.1(68B) Executive branch lobbying defined. “Executive branch lobbying” means acting directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by a state agency or any statewide elected official. For purposes of this chapter, “state agency” does not include the legislative branch of state government.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.2(68B) Executive branch lobbyist defined. “Executive branch lobbyist” means an individual who by acting directly does at least one of the following:

1. Receives compensation for engaging in executive branch lobbying.
2. Is a designated representative of an organization that has as one of its purposes engaging in executive branch lobbying.
3. Represents the position of a federal, state, or local agency in which the person serves or is employed as the representative designated to engage in executive branch lobbying.

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4. Makes expenditures of more than \$1,000 in a calendar year to communicate in person for the purpose of engaging in executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.3(68B) Individuals not considered executive branch lobbyists. The following individuals are not considered to be executive branch lobbyists:

1. Officials and employees of a political party that is organized in the state of Iowa and that meets the requirements of Iowa Code section 43.2, when the officials and employees represent the political party in an official capacity.

2. Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

3. All federal, state, and local elected officials, while performing the duties and responsibilities of office.

4. Individuals whose activities are limited to appearances to give testimony or provide information or assistance at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

5. Members of the staff of the United States Congress or the Iowa general assembly.

6. Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency within which an official's or employee's agency is involved in a collaborative project.

7. An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization and who is not paid compensation or is not specifically designated as an executive branch lobbyist.

8. Individuals whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under Iowa Code section 17A.4(1).

9. Individuals whose activities are limited to monitoring or following the progress of legislation, a rule, or an executive order, but who do not engage in executive branch lobbying.

10. Individuals who represent a client in responding to a request for proposal or otherwise receiving a contract or grant from a state agency.

11. Individuals who represent a client involved in a legal dispute with the state, including a contested case proceeding.

12. Individuals advocating for or against the appointment of a particular individual to a board or commission of the state.

Individuals who are uncertain as to whether or not they are considered executive branch lobbyists should contact the board for guidance prior to engaging in any executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.4(68B) Executive branch lobbyist client defined. "Executive branch lobbyist client" means a private person or a federal, state, or local governmental entity that pays compensation to or designates an individual to be a lobbyist before the executive branch.

This rule is intended to implement Iowa Code section 68B.2(6).

351—8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited.

8.5(1) Lobbyist compensation defined. "Lobbyist compensation" means any money, thing of value, or financial benefit conferred in return for engaging in executive branch lobbying.

8.5(2) Contingency fee lobbying prohibited. No person shall offer, nor shall any person accept, compensation contingent upon the outcome of executive branch lobbying services rendered or to be rendered. Complaints or information alleging a violation of this subrule shall be filed with the board and governed by Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.2(7).

351—8.6(68B) Executive branch lobbying expenditures defined. This rule is intended to aid executive branch lobbyists in reporting expenditures as required by Iowa Code section 68B.37 that are made by lobbyists for executive branch lobbying purposes. The provisions of this rule are intended to serve as a general guideline to obtain uniform reporting. The following are defined as executive branch lobbying expenditures:

1. Direct communication expenses such as telephone calls, letters, faxes, printing, and postage for purposes of engaging in executive branch lobbying.

2. Time spent researching and drafting proposed legislation, rules, or executive orders when the draft is then submitted to any executive branch official or employee.

3. Time spent by the lobbyist communicating with executive branch officials and employees for purposes of engaging in executive branch lobbying.

For purposes of this rule, any of these expenses incurred by a lobbyist's client shall apply to the lobbyist and shall be a reportable expense by the lobbyist. However, an expenditure made by any organization for publishing a newsletter or other informational release for its members is not a reportable expenditure.

This rule is intended to implement Iowa Code section 68B.37.

351—8.7(68B) Lobbyist registration required.

8.7(1) Time of filing. Any individual engaging in executive branch lobbying activity shall register by filing an executive branch lobbyist registration statement with the board on or before the day the lobbying activity begins. Registration expires upon the commencement of a new calendar year. Persons wishing to register for a new calendar year may do so on or after December 1 of the previous year.

8.7(2) Place of filing. Executive branch lobbyist registration statements shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Statements may also be filed by fax at (515)281-3701.

8.7(3) Information required. The following information shall be disclosed on the executive branch lobbyist registration statement:

a. The lobbyist's name and business address. The lobbyist's residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist's office or residence.

b. Whether or not the lobbyist is a governmental official representing the official position of the lobbyist's department, agency, or governmental entity.

c. Each of the lobbyist's clients, including the name and address of the client, a contact person and job title, and the contact person's telephone number. An E-mail address is optional.

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d. The lobbyist's signature and date of filing.

8.7(4) Government employee authorization letter. As required by Iowa Code section 68B.36(5), all federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall submit with their registration statements letters of authorization from their department or agency heads. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies shall disclose this fact on their lobbyist registration statements.

8.7(5) Amendment to registration. Any change or addition to the information in an executive branch lobbyist's registration statement shall be filed with the board within ten days after the change or addition is made known to the lobbyist. The lobbyist may file changes or additions by submitting an amended registration statement or by letter. If the lobbyist submits the changes or additions by letter, the letter shall contain sufficient information to notify the public and the board of the change or addition.

8.7(6) Cancellation. If a lobbyist's service on behalf of a client is concluded prior to the end of the calendar year, the lobbyist may cancel the registration and terminate the reporting requirements of Iowa Code section 68B.37 and rule 351—8.8(68B) so long as compliance with subrule 8.8(4) is achieved. Cancellation may be completed by the filing of an executive branch lobbyist termination statement or by letter.

8.7(7) Failure to timely file registration. An individual who fails to file an executive branch lobbyist registration statement before engaging in executive branch lobbying is in violation of Iowa Code section 68B.36 and is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code section 68B.36.

351—8.8(68B) Executive branch periodic lobbyist reports.

8.8(1) Every executive branch lobbyist, unless an exemption is granted pursuant to subrule 8.8(5), shall file periodic reports disclosing all of the following:

- a. The lobbyist's name and address.
- b. The reporting period covered by the filed report, including disclosing whether the report is an original or amended report.
- c. The lobbyist's clients.
- d. The recipient and amount of campaign contributions made by the lobbyist to candidates for state office. Campaign contributions shall not be made to state officers during the time period described in Iowa Code section 56.15A and rule 351—8.15(68B).

e. Expenditures made by the lobbyist for executive branch lobbying purposes.

f. The lobbyist's signature and the date filed. Reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.8(2) Place of filing. Executive branch periodic lobbyist reports shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.8(3) Time of filing. An executive branch periodic lobbyist report shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the lobbyist was engaged in executive branch lobbying. The report must be physically received by the board on or before the report due date. If

mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

8.8(4) Cancellation. If the lobbyist cancels registration on behalf of a client under rule 351—8.7(68B), the lobbyist shall file a final executive branch periodic lobbyist report on the next required due date or within 15 days of the cancellation, whichever is earlier. As required by Iowa Code section 68B.37(3), the final report shall include cumulative year-to-date information.

8.8(5) Exemption. As provided in Iowa Code section 68B.37(3), if the lobbyist is designated to represent an organization other than a governmental entity and is not paid compensation or does not expend more than \$1,000 to lobby, the lobbyist may file an Application for Lobbyist Quarterly Reporting Exemption form and one Executive Branch Periodic Lobbyist Report disclosing anticipated expenditures for the year in lieu of filing the quarterly reports. The exemption form and cumulative report shall be filed at the same time the lobbyist registration statement is filed.

8.8(6) Attorney-client privilege not applicable. Attorneys who engage in executive branch lobbying shall comply with the requirements of Iowa Code section 68B.37 and shall not avoid public disclosure of executive branch lobbying expenditures by asserting attorney-client privilege.

This rule is intended to implement Iowa Code section 68B.37.

351—8.9(68B) Executive branch lobbyist client reporting.

8.9(1) Every executive branch lobbyist client shall file reports that contain the following information:

- a. The name and address of the client, including a contact person.
- b. The name of the client's lobbyists.
- c. The amount of all salaries, fees, retainers, and reimbursements paid by the client to each lobbyist for engaging in executive branch lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. In the case of a salaried position when executive branch lobbying is part of the individual's duties, the reportable salary shall be based on a pro rata basis of time spent engaging in executive branch lobbying.
- d. The signature of the client's contact person and the date signed. Lobbyist client reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.9(2) Place of filing. Executive branch lobbyist client reports shall be filed with the board at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Reports may also be filed by fax at (515)281-3701 or electronically through the board's Web site at www.iowa.gov/ethics.

8.9(3) Time of filing. An executive branch lobbyist client report shall be filed on or before July 1. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

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This rule is intended to implement Iowa Code section 68B.38 as amended by 2003 Iowa Acts, House File 583, section 3.

351—8.10(68B) Reception reporting form. Iowa Code section 68B.22(4) as amended by 2003 Iowa Acts, House File 583, section 4, provides an exception to the gift law for food, beverage, and entertainment given to state and local governmental officials and state and local governmental employees at receptions held during the legislative session and when every member of the general assembly has been invited to attend.

8.10(1) Reporting required. A sponsor of a reception subject to this rule shall file a report disclosing the total amount for food, beverage, and entertainment expended on the reception, including any in-kind expenditures. The reception reporting form shall include the following information:

- The names of the sponsors of the reception.
- The date of the reception.
- The total cost expended at the reception for food, beverage, and entertainment. This amount shall include any costs for food, beverage, and entertainment that were provided to a sponsor at a price that was less than fair market value.

d. The signatures of the sponsors and the date signed.

8.10(2) When filed. The reception reporting form shall be filed within five business days following the date of the reception. If the due date falls on a weekend or holiday, the reporting deadline shall be extended to the next business day.

8.10(3) Place of filing. The reception reporting form shall be filed with the secretary of the senate, the chief clerk of the house, and the board. Forms filed with the board shall be mailed or delivered to the board office at 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The form may be filed by fax to (515)281-3701. A form filed by mail shall be postmarked with a United States Postal Service postmark on or before the due date.

8.10(4) Failure to file. The failure to timely file a reception reporting form with the board subjects the sponsor or sponsors of the reception to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code section 68B.22(4) as amended by 2003 Iowa Acts, House File 583, section 4.

351—8.11(68B) Penalties for delinquent reports.

8.11(1) Late lobbyist report. An executive branch lobbyist who fails to timely file an executive branch periodic lobbyist report shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	1st Occurrence	2nd Occurrence in a calendar year	Subsequent Occurrences in a calendar year
1 to 14	\$25	\$50	\$100
15 to 30	\$50	\$100	\$200
31 and over	\$100	\$200	\$400

8.11(2) Late client report. An executive branch lobbyist client who fails to file an executive branch lobbyist client report on or before the required due date shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	Amount
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

8.11(3) Additional penalty. If an executive branch lobbyist or an executive branch lobbyist client fails to file a re-

quired report within 45 days of the report due date, or fails to file a complete report, a contested case proceeding may be held to determine whether a violation has occurred. If, after a contested case proceeding, it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action so imposed would be in addition to the automatically assessed penalty in this rule.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.12(68B) Request for waiver of penalty. An executive branch lobbyist or an executive branch lobbyist client that believes there are mitigating circumstances that prevented the timely filing of a report may make a written request to the board for waiver of the penalty. The board must receive the request for waiver within 30 days of the lobbyist's or lobbyist client's being notified of the civil penalty assessment. Waivers will be granted only for exceptional or very unusual circumstances.

The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or request a contested case proceeding pursuant to rule 351—8.13(68B) to appeal the board's decision.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.13(68B) Contested case proceeding.

8.13(1) Request. If an executive branch lobbyist or an executive branch lobbyist client accepts administrative resolution of a matter through the payment of an assessed civil penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny a request or grant a partial waiver of an assessed civil penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

8.13(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

8.13(3) Failure to request a contested case proceeding. The failure to request a contested case proceeding to appeal the board's decision on a waiver request is the failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.32A(8), and 68B.33.

351—8.14(68B) Payment of penalty. An assessed civil penalty shall be paid by check or money order and shall be made payable to the State of Iowa General Fund and forwarded to: Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. The payment shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code sections 68B.32A(4) and 68B.32A(8).

351—8.15(56) Campaign contributions by lobbyists during the regular legislative session prohibited. Pursuant to Iowa Code section 56.15A, individuals who are registered in Iowa as either executive branch or legislative branch lobbyists are prohibited from contributing to, acting as an agent or

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intermediary for contributions to, or arranging for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session.

8.15(1) Application to governor. The prohibition on contributions to the governor or a gubernatorial candidate during session extends for an additional 30 days following the adjournment of a regular legislative session allowed for the signing of bills.

8.15(2) Exceptions. The prohibition on contributions during the regular legislative session does not apply to any of the following:

a. Contributions to an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office so long as the lobbyist's contribution is placed into the candidate's federal account.

b. Contributions to a candidate for state office who filed nomination papers for a special election called or held during the regular legislative session if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. However, elected state officials are prohibited from soliciting lobbyists for contributions to another candidate for state office when a special election is held during the regular legislative session.

c. Contributions made during a special legislative session. In the case of the governor and a gubernatorial candidate, this exception also includes the 30 days following a special legislative session unless that time period falls within 30 days of adjournment of the regular legislative session.

8.15(3) Complaints. Complaints or information provided to the board alleging a violation of Iowa Code section 56.15A involving either executive branch lobbyists or legislative branch lobbyists shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 56.15A.

351—8.16(68B) Lobbyists prohibited from making loans. Pursuant to Iowa Code section 68B.24, an executive branch official, executive branch employee, or a candidate for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

8.16(1) Offer of loan prohibited. An executive branch lobbyist shall not directly or indirectly offer or make a loan to an executive branch official, executive branch employee, or a candidate for statewide office.

8.16(2) Exception. The prohibitions in Iowa Code section 68B.24 do not apply to loans made in the ordinary course of business. "Ordinary course of business" means the loan is made by a person who is regularly engaged in a business that makes loans to members of the general public, and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

8.16(3) Complaints. Complaints or information provided to the board alleging a violation of Iowa Code section 68B.24 by an executive branch official, executive branch employee, candidate for statewide office, or an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.24.

351—8.17(68B) Ban on certain lobbying activities by government personnel. Executive branch officials and executive branch employees are prohibited by Iowa Code section 68B.5A from engaging in certain types of lobbying activities during the time in which these officials and employees serve or are employed by the state. In addition, Iowa Code section 68B.5A prohibits executive branch officials and executive branch employees from accepting, under certain situations, employment as lobbyists within two years of leaving state government.

8.17(1) A person who serves as a statewide elected official, the executive or administrative head of an agency, or the deputy executive or administrative head of an agency shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated to represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government.

8.17(2) The head of a major subunit of a department or independent state agency or a full-time employee of an office of a statewide elected official shall not act as a lobbyist during the time in which the person is employed by the state before the agency that the person is employed by or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated to represent the official position of the person's agency. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying before the agency that the person was employed by or before state agencies, officials, or employees with whom the person had substantial and regular contact as part of the person's former duties.

8.17(3) A state employee who is not included in subrule 8.17(1) or 8.17(2) shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated to represent the official position of the person's agency. Persons subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

8.17(4) Exception. As provided in Iowa Code section 68B.5A(7), the prohibition on accepting employment as a lobbyist does not apply to a person who, within two years of leaving state service or employment, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and represents the position of the new office or employment.

8.17(5) Complaints. Complaints or information provided to the board alleging a violation of Iowa Code section 68B.5A by an executive branch official or an executive branch employee shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.5A.

351—8.18(68B) False communications prohibited.

8.18(1) False material fact. An executive branch lobbyist shall not intentionally deceive or attempt to deceive any executive branch official or any executive branch employee

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

in regard to a material fact pertinent to an administrative rule, legislation, or an executive order.

8.18(2) False communication. An executive branch lobbyist shall not cause a communication to be sent to an executive branch official or an executive branch employee in the name of either of the following:

- a. A fictitious person; or
- b. A real person except with the consent of that person.

8.18(3) Complaints. Complaints or information provided to the board alleging a violation of this rule by an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.32A(12).

351—8.19(68B) Advisory opinions. Any person under the board's jurisdiction that is affected by Iowa Code chapter 68B or 351—Chapter 8 may seek an advisory opinion from the board pursuant to rules 351—1.2(68B) and 1.3(68B). The purpose of a board opinion is to apply a statute or rule to a particular factual situation. Advice contained in a board opinion, if followed, constitutes a defense to a subsequently filed complaint.

This rule is intended to implement Iowa Code section 68B.32A(11).

ITEM 2. Rescind 351—Chapter 13 and adopt the following new chapter in lieu thereof:

CHAPTER 13

PETITIONS FOR RULE MAKING

351—13.1(68B) Petition for rule making.

13.1(1) Who may file. Any person may file a petition for rule making with the Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309. A petition is deemed filed when it is received by the board. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink.

13.1(2) Required information. The petition must provide the following information:

- a. A statement that the document is a petition for rule making.
- b. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed, together with a quotation of the relevant language.
- c. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
- d. A brief summary of petitioner's arguments in support of the action urged in the petition.
- e. A brief summary of any data supporting the action urged in the petition.
- f. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action that is the subject of the petition.
- g. Any request by petitioner for a meeting between the petitioner and the board's executive director.

13.1(3) Signature. The petition shall be dated and signed by the petitioner or the petitioner's representative and shall include the name, mailing address, and telephone number of

the petitioner and, if applicable, the petitioner's representative. A statement indicating the person to whom communications concerning the petition should be directed shall be included.

13.1(4) Denial for incompleteness. The board may deny a petition because it does not substantially comply with the requirements of this rule.

351—13.2(68B) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition, including the board's legal counsel.

351—13.3(68B) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309.

351—13.4(68B) Board consideration.

13.4(1) Procedure. Within 30 days after the filing of a petition or within 5 days following a regular meeting of the board at which the petition has been received and discussed, whichever is earlier, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Any person may submit comments on the substance of the petition.

13.4(2) Board response. Within 90 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must either deny the petition or grant the petition. A notice of denial shall contain the specific reasons for the board's decision. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board mails or delivers the required notification to petitioner.

13.4(3) Refiling petition. Denial of a petition because it does not substantially provide the required information in rule 351—13.1(68B) does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's denial of the petition.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 68B.32A(1).

ARC 2816B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services proposes to amend Chapter 47, “Pilot Diversion Initiatives,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments:

- Expand the Family Investment Program (FIP) diversion pilot program to be a statewide program. The pilot projects have demonstrated that diversion assistance given to selected families before they receive FIP assistance is effective in reducing FIP participation. These amendments will allow all low-income Iowans access to this program.

- Rescind rules for the pilot community self-sufficiency grants program and the pilot post-FIP diversion program. These programs have not proven to be cost-effective due to limited participation and high administrative costs.

The FIP diversion program provides short-term assistance to remedy an immediate need, which permits the family to maintain self-sufficiency without ongoing cash assistance. FIP diversion payments are less than long-term cash assistance. A condition of receiving diversion assistance is a period of ineligibility for FIP proportionate to the amount of assistance received.

The amendments clarify and simplify existing diversion rules to provide for fair and equitable treatment of participants across localities. Requirements for local plans and provisions for local variations in eligibility limits are removed. Operating individual county projects is administratively burdensome and is not a practical use of local resources.

These amendments do not provide for waivers in specified situations because participation in this program is voluntary. Applicants and participants may appeal any decision and may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 22, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

People appearing at the following meetings may make oral presentations or submit written comments:

Story County DHS Office Second Floor Conference Room 126 South Kellogg Street Ames	October 23 3 to 6 p.m.
Iowa Building Seventh Floor Conference Room 411 Third Street SE Cedar Rapids	October 23 9:30 to 11:30 a.m.
Pottawattamie County DHS Office ICN Room 417 E. Kanessville Boulevard Council Bluffs	October 22 1:30 p.m.
Scott County Administrative Center Sixth Floor Conference Room 428 Western Avenue Davenport	October 23 10 a.m.
City View Plaza Conference Room 102 1200 University Avenue Des Moines	October 22 9 a.m.
Nesler Centre Third Floor Conference Room 799 Main Street Dubuque	October 23 10 a.m.

Trosper-Hoyt Building First Floor Conference Rooms A & B 822 Douglas Street Sioux City	October 22 1 p.m.
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Pinecrest Office Building Room 220 1407 Independence Avenue Waterloo	October 23 10 a.m. to 12 noon
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These amendments are intended to implement Iowa Code section 239B.11.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 47**, chapter title and preamble, as follows:

CHAPTER 47

PILOT DIVERSION INITIATIVES

PREAMBLE

This chapter describes the department of human services pilot diversion initiatives. The purpose of these pilot programs is to ~~determine the potential benefits and cost savings of providing~~ *provide* immediate, short-term assistance to families in lieu of ongoing assistance under the family investment program (FIP) (~~applicant~~ diversion), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (*family* self-sufficiency grants), ~~or to provide supportive services and short-term cash assistance to families in order to prevent the need to return to FIP (post-FIP diversion).~~ Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment. *While the diversion initiatives are available statewide, local areas may exercise flexibility in program design, within the overall confines of these rules.*

ITEM 2. Amend **441—Chapter 47**, Division I, division title and preamble, as follows:

DIVISION I

PILOT FIP-APPLICANT DIVERSION PROGRAM

PREAMBLE

The ~~pilot FIP-applicant~~ diversion program provides a voluntary alternative to ongoing cash assistance *authorized* to families through the family investment program (FIP) as provided under 441—Chapters 40 and 41. The purpose of the ~~pilot FIP-applicant diversion~~ program is to provide immediate, short-term assistance to a family in lieu of ongoing FIP cash assistance. Assistance under this division ~~may will~~ postpone or prevent the need to apply for FIP.

ITEM 3. Amend rule **441—47.1(239B)** as follows:

Rescind the definitions of “approved pilot project,” “diversion assistance,” “fiscal agent,” “human services area administrator (HSAA),” “local plan,” “pilot proposal,” “request for application,” “request for renewal,” “support services,” and “written funding agreement.”

Amend the following definitions:

“Candidate” means anyone expressing an interest in the ~~pilot FIP-applicant~~ diversion program, or identified by a county office ~~having an approved pilot project~~ as likely to meet the criteria for participating in the ~~project~~ *program*, and who is working with the county office to enroll in the program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

"Cash value" means FIP-applicant diversion assistance having direct value to the participant, through cash payment, voucher, or vendor payment. ~~Examples of assistance without direct cash value are mentoring and case management.~~

"County office" means the ~~county~~ local office of the department of human services.

"Division administrator" means the administrator of the division of ~~economic assistance financial, health and work supports~~ of the department, or the administrator's designee.

"Immediate, short-term assistance" means *that* assistance provided under this division shall be authorized in less time than it would take to process and issue FIP under normal processing standards described at rule 441—40.25(239B), and that it shall not occur on a regular or frequent basis. Participants may receive assistance under this division more than once ~~under the duration of the pilot~~, but shall not receive assistance so often as to be considered receiving ongoing assistance as under FIP. ~~Time frames and frequency of assistance shall be detailed in the local plan.~~

"Temporary assistance for needy families" or "TANF" means the program for granting benefits to eligible groups under Title IV-A of the federal Social Security Act as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. ~~This replaced the aid to families with dependent children program.~~

Adopt the following new definition:

"FIP diversion assistance" means any type of assistance provided under this division, as described in subrule 47.4(1).

ITEM 4. Rescind rules 441—47.2(239B), 441—47.3(239B), and 441—47.4(239B) and adopt the following new rules in lieu thereof:

441—47.2(239B) Availability of program. FIP diversion is operated statewide and is funded on a fiscal-year basis (July through June). If funds are expended before the end of the fiscal year, the program shall be discontinued until funding is received for the next fiscal year, in accordance with rule 441—47.8(239B). There is no waiting list for FIP diversion funds.

441—47.3(239B) General provisions.

47.3(1) FIP diversion assistance shall be offered to those families determined to be likely candidates for success in the program, as determined by county staff. FIP diversion program candidates:

- a. Shall be otherwise eligible for FIP, as set forth at subrule 47.5(1).
- b. Must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the immediate, short-term assistance offered by this division.

47.3(2) Participation in the FIP diversion program is voluntary and shall be based on an informed decision by the family.

47.3(3) Receipt of FIP diversion assistance shall result in a period of ineligibility for FIP assistance, as set forth at subrule 47.5(3).

441—47.4(239B) Assistance available. FIP diversion assistance shall assist participating families to overcome barriers to obtaining or retaining employment.

47.4(1) Types of assistance. FIP diversion assistance shall be approved for needs that create barriers to a family obtaining or retaining employment. Assistance shall include, but is not limited to:

- a. Basic needs, such as household supplies, food, medical expenses, and personal care items. Basic needs shall be

allowed only if payment for the needs prevents a family from accumulating debt before receiving the first paycheck. Basic needs shall not be allowed for families who are attempting to obtain employment.

b. Child care. Child care shall be approved only if the family is not immediately eligible for child care assistance as described at 441—Chapters 130 and 170.

c. Job-specific expenses, such as licensing fees, tools of the trade, and uniforms required to obtain a job, advance on a job, or start self-employment.

d. School-related expenses, such as fees, tuition, books and supplies required for training to qualify for an offered job, and training required to advance in a job, when the training is not paid for by the employer.

e. Shelter-related expenses, including rent, mortgage, insurance, lot rent, telephone, heating and cooling, water, sewer, garbage, and deposits, if the payment prevents a family from accumulating debt before receiving the first paycheck, or enables the family to acquire space to start self-employment.

f. Transportation, including bus passes or tokens, car repair, vehicle purchase and payment, driver's license fees, gas, and vehicle insurance. All payments must be tied to obtaining or retaining a job or to preventing a family from accumulating debt before receiving the first paycheck.

47.4(2) Maximum value of assistance. For assistance having a cash value to the family, each family may receive a maximum amount of \$2,000 during the state fiscal year.

47.4(3) Frequency of assistance. FIP diversion assistance is intended to be of an immediate and short-term nature. While a family may be a candidate more than once, this program shall not be considered ongoing assistance.

47.4(4) Assistance method. FIP diversion assistance shall be granted through vendor payments or voucher payments, or both.

47.4(5) Supplanting other assistance. FIP diversion funds shall not be used for services already available through local resources at no cost to the family or to the department. The candidate may be referred to other department or local resources as requested.

ITEM 5. Amend rule **441—47.5(239B)** as follows:

Amend subrule 47.5(1) as follows:

Amend the introductory paragraph as follows:

47.5(1) Otherwise FIP eligible. Candidates cannot receive both FIP (*including hardship FIP*) and assistance under this division in the same calendar month. Candidates for the pilot FIP-applicant diversion program must meet the following FIP eligibility criteria ~~and any other FIP eligibility criteria found in 441—Chapters 40 and 41 included in the local plan of an approved pilot project~~:

Amend paragraphs "a," "e," and "f" as follows:

a. Requirements related to a child's age and living with a specified relative as described at ~~rules rule~~ 441—41.21(239B) and 441—~~subrules~~ 41.22(239B3) and 41.22(4).

e. Income requirements described at rule 441—41.27(239B). Candidates must ~~pass the 185 percent income test be at or below 200 percent of the federal poverty level to be considered. Pilot projects may incorporate more restrictive criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239B).~~

f. ~~Family members cannot be in Requirements related to the six-month period of ineligibility applied with a subsequent limited benefit plan as described at 441—subrule 41.24(8).~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

Rescind paragraph “g” and adopt **new** paragraphs “g,” “h,” and “i” as follows:

g. Requirements related to the 60-month lifetime limit as described at rule 441—41.30(239B). If the family has reached or passed the 60-month lifetime limit, there is no FIP diversion eligibility.

h. Requirements related to the hardship requirements as described at 441—subrule 41.30(3). If the family is approved for hardship, there is no FIP diversion eligibility.

i. Requirements related to the family investment agreement as described at rule 441—41.24(239B). Any failure to sign or cooperate with the family investment agreement results in ineligibility for FIP diversion.

Amend subrules 47.5(2) and 47.5(3) as follows:

47.5(2) Offer to participate declined. Candidates for the pilot FIP applicant diversion program shall not be denied FIP on the basis that they do not want to participate in the pilot FIP diversion program.

47.5(3) Period of FIP ineligibility. Receipt of FIP diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family, including new members moving into the household. Local projects shall have flexibility in determining the period of ineligibility except that the *The period of ineligibility shall not exceed equal* the number of calendar days arrived at by using the following formula:

$$\frac{\text{diversion amount}}{\div} \frac{(\text{payment standard for the family size})}{30} \times 2$$

For example, if the FIP diversion assistance amount is \$500 \$1,500, and the payment standard for the family of three is \$426, the period of ineligibility ~~cannot exceed 70~~ is 211 days. *If FIP diversion assistance is approved on January 2, the family is ineligible to receive FIP assistance until after August 1.*

$$\$500 \$1,500 \div \frac{(\$426)}{30} = 211$$

The period of ineligibility shall include the seven-day wait period as described at rule 441—40.26(239B), when the household applies at least seven days prior to before the end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the requirements for effective date of eligibility at 441—40.26(239B) apply.

The specific period of ineligibility administered by each pilot shall be set forth in the local plans. These periods of ineligibility are applicable statewide, not limited to the local project area providing the assistance. The period of ineligibility shall not apply to diversion family members moving to other families.

ITEM 6. Rescind and reserve rule **441—47.6(239B)**.

ITEM 7. Amend rule 441—47.7(239B) as follows:

Amend subrule 47.7(1), introductory paragraph and paragraph “d,” as follows:

47.7(1) Notification. All candidate households or households participating in the pilot FIP diversion program under this division shall receive adequate written notice as described at 441—paragraph 7.7(1)“b,” using Form 470-0486, Notice of Decision. The written notice shall:

d. Give any period of ineligibility for FIP based on the written policies and procedures of the pilot as required by subrule 47.5(3) and described at rule 441—47.6(239B), if assistance shall be provided.

Amend subrules 47.7(2), 47.7(3), and 47.7(4) as follows:

47.7(2) Decisions regarding assistance. All decisions regarding assistance available under this division shall be in accordance with the rules in this division and the written policies and procedures of the approved project as required by rule 441—47.6(239B).

47.7(3) Appealable actions. Decisions made by the department affecting clients may be appealed pursuant to 441—Chapter 7. All sections of the local plan applicable to an appeal shall be provided as part of the appeal summary.

47.7(4) Nonappealable actions. Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under this division is that diversion funds for the approved pilot project have been reduced, exhausted, eliminated or otherwise encumbered.

ITEM 8. Rescind rule 441—47.8(239B) and adopt the following **new** rule in lieu thereof:

441—47.8(239B) Funding and method of payment. The division administrator may immediately discontinue the FIP diversion program if funding is reduced, exhausted, eliminated, or otherwise encumbered.

47.8(1) Priority of assistance. To ensure equitable treatment, applications for FIP diversion assistance shall be approved on a first-come, first-served basis until all funds have been depleted. “First-come, first-served” is determined by the date the application is approved for payment and entered into the diversion computer system.

47.8(2) Partial payment. Because funds are limited, applications may be approved for less than the amount requested. Payment cannot be approved beyond the amount of funds available.

47.8(3) Reserved funds. A portion of yearly FIP diversion funds not to exceed 10.6 percent of the total FIP diversion allocation shall be reserved for:

a. Administrative costs; and

b. Final appeal decisions reversing the department’s denial that are received after funds for the program have been exhausted.

47.8(4) Untimely applications. FIP diversion applications received after the program is discontinued for the year and more than five working days before the program begins again the next fiscal year shall be denied.

ITEM 9. Rescind and reserve rule **441—47.9(239B)**.

ITEM 10. Amend rule 441—47.10(239B) as follows:

Amend subrule 47.10(2) as follows:

47.10(2) Records retention. ~~All persons who contract with the county County office staff~~ shall maintain all records related to the program for five years. They shall allow federal or state officials access to all records upon request.

Amend subrule **47.10(3)**, paragraph “a,” as follows:

a. County offices ~~having approved pilot projects~~ shall provide reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

ITEM 11. Rescind and reserve rule **441—47.11(239B)**.

ITEM 12. Amend rule **441—47.21(239B)**, definition of “department division administrator,” as follows:

“Department division administrator” means the administrator of the department of human services division of economic assistance financial, health and work supports, or the administrator’s designee.

ITEM 13. Rescind **441—Chapter 47, Division III and Division IV.**

ARC 2817B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 52, “Payment,” and Chapter 177, “In-Home Health-Related Care,” Iowa Administrative Code.

These amendments decrease the maximum State Supplementary Assistance reimbursement rates for in-home health-related care and residential care facility care. The amendments will lower rate limits by 6 percent effective February 1, 2004, after allowing for the Social Security cost-of-living increase in January 2004. These changes are necessary to keep the State Supplementary Assistance expenditures within the state appropriation, while still meeting the federal maintenance-of-effort requirements.

The amount of State Supplementary Assistance benefits a client receives is calculated by subtracting the client’s countable income (after disregards) from the cost of the client’s care. The effect of these changes is to lower income limits for these two living arrangements, potentially making some clients ineligible, and to lower supplementation for clients whose income and cost of care remain below the new limits. Providers are prohibited from making additional charges to the client over the maximum payment limit set by the program.

These amendments do not provide for waivers in specified situations because the maximum payment rates must be reduced to control expenditures.

Any interested person may make written comments on the proposed amendments on or before October 22, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249.3 and 2003 Iowa Acts, House File 667, section 14, subsection 2, and section 31, subsections 2 and 3.

The following amendments are proposed.

ITEM 1. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of ~~\$18.72~~ \$17.86 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~\$26.20~~ \$25. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 2. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~\$503.67~~ \$480.55. The provider shall accept the pay-

ment made and shall make no additional charges to the recipient or others.

Amend subrule 177.4(7), introductory paragraph, as follows:

177.4(7) Income for adults. The *gross countable* income of the individual and spouse, living in the home, shall be limited to ~~\$498.29~~ \$480.55 per month if one needs care or ~~\$996.58~~ \$961.10 if both need care, *with after* the following disregards *from gross income*:

Amend subrule **177.4(8)**, paragraph “b,” introductory paragraph, as follows:

b. The *countable* income of the child shall be limited to ~~\$498.29~~ \$480.55 per month *with after* the following disregards *from gross income*:

ARC 2818B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 65, “Administration,” Iowa Administrative Code.

These amendments:

- Change the name “Food Stamp Program” to “Food Assistance Program,” in recognition of the transition from printed coupons to electronic issuance of benefits.
- Implement simplified reporting requirements for most applicants and recipients.
- Update names, addresses, and form numbers and make format changes to increase readability.

Under these amendments, Iowa will have two reporting methods for food assistance households. No households will be required to submit monthly reports. Households with the following characteristics must report certain changes within ten days of the change:

- All adult household members are elderly or disabled and have no earned income; or
- The household contains one or more non-disabled persons 18 to 49 years old and no children under age 18; or
- Household members are migrant or seasonal farmworkers; or
- All household members are homeless.

All other households will be subject to simplified reporting. These households will be certified for 12 months. The Department will require an interim report from these households in the sixth month of the certification. Other than this report, these households will be required to report only when their income exceeds 130 percent of the federal poverty level (the upper limit for food assistance eligibility). The Department will act on all changes that are reported or otherwise come to the attention of the Department.

Retrospective budgeting will end at the end of December 2003 for households now subject to change reporting and at the end of January 2004 for households now subject to monthly reporting. Income for all food assistance house-

HUMAN SERVICES DEPARTMENT[441](cont'd)

holds will be budgeted prospectively beginning with the month of February 2004.

The Food Assistance Program will use the same methods for converting weekly or biweekly income to a projected monthly figure as are used in the Family Investment Program and Family Medical Assistance Program. Income will be projected by adding all income expected to be received in the period, dividing the result by the number of instances income will be received in the period, and multiplying the result by four if the income is received weekly or by two if the income is received biweekly.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive federal law or regulation.

Any interested person may make written comments on the proposed amendments on or before October 22, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 234.6, subsection 7.

The following amendments are proposed.

ITEM 1. Amend the title of **441—Chapter 65**, Title VII, as follows:

TITLE VII
FOOD STAMP PROGRAM PROGRAMS

ITEM 2. Amend **441—Chapter 65**, title and preamble, as follows:

CHAPTER 65
FOOD ASSISTANCE PROGRAM ADMINISTRATION
PREAMBLE

The basis for the food stamp assistance program is as provided in Title 7 of the Code of Federal Regulations. The purpose of this chapter is to provide for adoption of new and amended federal regulations as they are published, to establish a legal basis for Iowa's choice of administrative options when administrative options are given to the state in federal regulations, to implement the policy changes that the United States Department of Agriculture (USDA) directs states to implement that are required by law but are not yet included in federal regulations, and to implement USDA-approved demonstration projects and waivers of federal regulations.

ITEM 3. Amend rule **441—65.1(234)** as follows:

Rescind the definitions of "constant unearned income," "recent work history," "report month," and "suspension."

Adopt the following **new** definitions in alphabetical order: "Department" means the Iowa department of human services.

"Food assistance" means benefits provided by the federal program administered through Title 7, Chapter II of the Code of Federal Regulations, Parts 270 through 283.

ITEM 4. Amend rule 441—65.2(234), introductory paragraph and first unnumbered paragraph, as follows:

441—65.2(234) Application.

65.2(1) Application filing. Persons in need of food stamp assistance benefits may file an application at any local department office in Iowa.

a. An application is filed the day a food stamp local department office receives an application for food stamp assistance benefits on Form 470-0306 or 470-0307 (Spanish), Application for Food Stamps Assistance, or Form 470-0462 or Form 470-0466 (Spanish), Public Assistance Application, containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative.

b. When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.

c. A household shall complete a Public Assistance Application when any person in the household is applying for or receiving aid through the family investment program, family medical assistance program (FMAP)-related Medicaid, or the refugee resettlement assistance programs program.

d. The application is complete when a completed Form 470-0306, 470-0307, 470-0462, or 470-0466 is submitted.

e. Households receiving food stamp assistance benefits in Iowa may apply for continued participation by submitting Form 470-2881, Review/Recertification Eligibility Document.

ITEM 5. Amend rule 441—65.3(234), introductory paragraph, as follows:

441—65.3(234) Administration of program. The food stamp assistance program shall be administered in accordance with the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., and in accordance with federal regulation, Title 7, Parts 270 through 283 as amended to June 19, 2002.

ITEM 6. Amend rule 441—65.4(234) as follows:

Amend the introductory paragraph as follows:

441—65.4(234) Issuance. The department shall issue food stamp assistance benefits by electronic benefits transfer (EBT), subject to the implementation plan. Implementation will be phased in from May 2003 through October 2003. The state will complete statewide conversion of food stamp EBT by October 2003.

Amend subrule 65.4(1) as follows:

65.4(1) Schedule. Food stamp benefits Benefits for ongoing certifications shall be made available to households on a staggered basis during the first ten calendar days of each month.

Amend subrule 65.4(4), introductory paragraph and paragraph "a," as follows:

65.4(4) Point-of-sale terminals. Point-of-sale terminals allow clients to access food stamp assistance benefits and retailers to redeem food sales.

a. Redemption threshold. The department will not place point-of-sale terminals with any authorized retailer with less than \$100 in monthly food stamp assistance redemptions. Those retailers may participate through a manual voucher process described in paragraph 65.4(5)"b."

ITEM 7. Adopt **new** rule 441—65.5(234) as follows:

441—65.5(234) Simplified reporting.

65.5(1) Identification. All households are subject to simplified reporting requirements except:

a. Households that are exempt from periodic reporting by federal statute.

b. Households that include one or more non-disabled persons 18 to 49 years old and do not include a child under age 18.

65.5(2) Determination of eligibility and benefits. Eligibility and benefits for simplified reporting households shall

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be determined on the basis of the household's prospective income and circumstances.

65.5(3) Certification periods. Simplified reporting households shall be certified for 12 months. Households in which all members are receiving family investment program (FIP) cash assistance or family medical assistance program (FMAP)-related Medicaid shall be assigned certification periods of 12 months. However, a certification period of less than 12 months may be assigned at application or recertification to match the food assistance recertification date to the FIP or medical assistance annual review date.

65.5(4) Reporting responsibilities.

a. Simplified reporting households shall complete Form 470-4026, Food Assistance Interim Report, once during their certification period. A completed form is one that:

- (1) Has all items answered;
- (2) Is accompanied by verification as required in subrule 65.5(5); and
- (3) Is signed and dated by a responsible household member.

b. The department shall provide a postage-paid envelope for the return of the Food Assistance Interim Report.

(1) When the Food Assistance Interim Report is issued in the department's regular end-of-month mailing, households approved or recertified for food assistance shall return the completed form to the local department office where the case is assigned by the fifth calendar day of the sixth month of their certification period.

(2) When the form is not issued in the department's regular end-of-month mailing, households shall return the completed form to the local office where the case is assigned by the seventh day after the date of the issuance of the form.

c. Failure to return a completed Food Assistance Interim Report shall result in cancellation of assistance.

d. In addition to completing the Food Assistance Interim Report, simplified reporting households are required to report only if the household's total gross income exceeds 130 percent of the federal poverty level for the household size. The household must report this change within ten days of the end of the month in which the income exceeds 130 percent of the poverty level.

e. A categorically eligible household that reports income over 130 percent of the federal poverty level and that remains eligible for benefits shall not be required to make any additional report of changes.

65.5(5) Verification submitted with report. Notwithstanding anything to the contrary in these rules or in federal regulations, a Food Assistance Interim Report shall be considered incomplete when it is not accompanied by verification of the following changes:

a. Changes of more than \$100 per month in the amount of the household's total gross monthly earned income, as well as when earned income starts or stops.

b. Changes in the amount of the household's total gross monthly unearned income, prorated income, or annualized income when:

- (1) The amount of this income changes by \$50 or more; or
- (2) This income starts or stops.

65.5(6) Additional information and verification. A household that has submitted a completed Food Assistance Interim Report shall submit, or cooperate in obtaining, additional information and verification needed to determine eligibility or benefits within ten calendar days of the department's written request. This ten days is the extended filing period.

65.5(7) Action on reported changes. The department shall act on all reported changes for households regardless of the household's reporting requirements.

65.5(8) Entering or leaving simplified reporting. When a household reports a change that makes the household subject to different reporting requirements, the change in the requirements shall be effective in the month following the month when the change is reported. If there are more than six months left in the household's certification period at the time of a change to simplified reporting, a Food Assistance Interim Report shall be due before the end of the certification period. The department shall notify the household of the new reporting requirements.

65.5(9) Reinstatement.

a. Reinstatement of a household whose eligibility was canceled for failure to submit a completed Food Assistance Interim Report shall occur only when the otherwise eligible household submits a completed report by the end of the month the report is due or by the end of the extended filing period, whichever is later.

b. A household that has received Form 470-1968, Notice of Cancellation, shall be notified in writing of its status every time the department receives a Food Assistance Interim Report before the end of the month the report was due or the end of the extended filing period, whichever is later.

ITEM 8. Amend subrule 65.8(9) as follows:

65.8(9) Standard deduction. Each household will receive a standard deduction from income equal to 8.31 percent of the net income limit for food stamp assistance eligibility. No household will receive an amount less than \$134 or more than 8.31 percent of the net income limit for a household of six members.

ITEM 9. Amend rule 441—65.9(234) as follows:

441—65.9(234) Treatment centers and group living arrangements. ~~Alcoholic Alcohol~~ or drug treatment or rehabilitation centers and group living arrangements shall complete Form 470-2724, Monthly Facility Food Stamp Report for Drug or Alcohol Treatment Centers or Group Living Arrangements, on a monthly basis and return the form to the local food stamp department office where the center is assigned.

~~Notwithstanding anything to the contrary in these rules or regulations, disabled persons as defined in 7 CFR 271.2, as amended to December 4, 1991, residing in certain group living arrangements are eligible to receive and use food stamp benefits to purchase their prepared meals.~~

~~These group living arrangements are public or private nonprofit residential settings that serve no more than 16 residents that are certified by the appropriate agency or agencies of the state under regulations issued under Section 1616(e) of the Social Security Act or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under Section 1616(e) of the Social Security Act.~~

ITEM 10. Amend rule 441—65.11(234) as follows:

441—65.11(234) Discrimination complaint. Individuals who feel that they have been subject to discrimination may file a written complaint with the Affirmative Action Office Diversity Programs Unit, Department of Human Services, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114.

ITEM 11. Amend subrules 65.13(1), 65.13(2), and 65.13(3) as follows:

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65.13(1) Joint processing with SSI/~~food stamp~~ assistance. The department will handle joint processing of supplemental security income and ~~food stamp~~ *assistance* applications by having the social security administration complete and forward ~~food stamp~~ *assistance* applications.

65.13(2) Public Joint processing with public ~~assistance/food stamp~~ assistance. The department shall jointly process public ~~assistance and food stamp~~ *assistance* applications.

65.13(3) Single interview for public ~~assistance/food stamp~~ assistance. In joint processing of public ~~assistance and food stamp~~ *assistance* applications, the department shall conduct a single interview at initial application for both ~~public assistance and food stamp~~ purposes.

ITEM 12. Amend rule 441—65.16(234) as follows:

441—65.16(234) Complaint system. Clients wishing to file a formal written complaint concerning the ~~food stamp~~ *assistance* program may submit Form 470-0323, or 470-0327 (Spanish), ~~Food Stamp~~ *Assistance* Complaint, to the office of field support. Department staff shall encourage clients to use the form.

ITEM 13. Amend rule 441—65.19(234) as follows:

Amend the introductory paragraph as follows:

441—65.19(234) Monthly reporting/retrospective budgeting. *This rule is effective only until the transition to simplified reporting is complete.*

Amend subrule **65.19(2)**, paragraph “b,” as follows:

b. Households shall return the completed form to the local ~~food stamp~~ *department* office where the case is assigned by the fifth calendar day of the month which precedes the issuance month, when the form was issued in the department’s regular end-of-month mailing. Households shall return the completed form to the local ~~food stamp~~ *department* office where the case is assigned by the seventh day after the date of the issuance of the form when the form was not issued in the department’s regular end-of-month mailing.

Amend subrules 65.19(8), 65.19(12), and 65.19(16) as follows:

65.19(8) Prospective beginning months. The department shall calculate benefits for eligible households prospectively for the two beginning months. When a household has applied for assistance from the family investment program or the refugee resettlement cash assistance program, and for ~~food stamp~~ *assistance* benefits using Form 470-0462 or 470-0466 (Spanish), Public Assistance Application, the department shall allow a third ~~food stamp~~ *assistance* beginning month. The department shall allow a third beginning month when the public assistance program’s first “initial month” is the same calendar month as the second ~~food stamp~~ *assistance* beginning month, and the third beginning month permits a simultaneous transition to retrospective budgeting.

65.19(12) Mailing of notices. All individual household notices of benefit amounts will be mailed separately from ~~food stamp~~ benefits.

65.19(16) Notice regarding reinstatement. The household which has received a Notice of Cancellation, Form 4407-0 470-1968, shall be notified in writing of its status every time the department receives a monthly report form ~~prior to before~~ the end of the “report month,” or ~~before~~ the end of the extended filing period, whichever is later.

Amend subrule **65.19(18)**, paragraphs “a” and “b,” as follows:

a. Except for applications received during a period of time when the household was not certified to receive ~~food stamp~~ benefits, household membership shall be determined as it was or is anticipated to be on the first day of the issuance

month. Changes in household membership occurring on or after the first day of the month which are reported during the month in which the change occurs will not be considered until the following month.

b. Except for qualified residents of a shelter for battered women and children, individuals shall not be added to the household before they are removed from another household where they were receiving ~~food stamp~~ benefits.

Amend subrule 65.19(19), introductory paragraph, as follows:

65.19(19) Certification periods. Households in which all members are receiving family investment program (FIP) cash assistance, or a family medical assistance program (FMAP), or FMAP-related medical assistance *Medicaid* will be assigned certification periods of 6 to 12 months. However, a certification period of less than 6 months may be assigned at application or recertification to match the ~~food stamp~~ *assistance* recertification date and the public assistance review date.

ITEM 14. Amend subrules 65.21(4) and 65.21(5) as follows:

65.21(4) Demand letters. Households that have ~~food stamp~~ *assistance* claims shall return the repayment agreement no later than 20 days after the date the demand letter is mailed.

a. For agency error and inadvertent household error, when households that do not return the repayment agreement by the due date or do not timely request an appeal, allotment reduction shall occur with the first allotment issued after the expiration of the Notice of Adverse Action time period.

b. For intentional program violation, when households that do not return the repayment agreement by the due date, allotment reduction shall occur with the next month’s allotment.

65.21(5) Adjustments for claim repayment. A household or authorized representative may initiate a ~~food stamp~~ claim repayment by using benefits in an EBT account. The client or authorized representative shall complete Form 470-2574, EBT Adjustment Request, to authorize adjustments to a household’s EBT account.

ITEM 15. Amend rule 441—65.22(234) as follows:

Amend subrule **65.22(1)**, paragraphs “b” and “g,” as follows:

b. Dependent care costs. Households shall be required to verify dependent care costs at the time of application and recertification, ~~when reported in the monthly reporting system, and whenever a change is reported (when a household is not in the monthly reporting system).~~

g. Child support payment deduction. Households shall be required to verify legally obligated child support and child medical support payments made to a person outside of the ~~food stamp~~ *assistance* household only at certification and recertification and whenever the household reports a change.

Amend subrule **65.22(3)**, first unnumbered paragraph, as follows:

Clients are required to cooperate with the ~~food stamp~~ investigation section *division* of the department of inspections and appeals in establishing ~~food stamp~~ eligibility factors, including attending requested interviews. Refusal to cooperate will result in denial or cancellation of the household’s ~~food stamp~~ *assistance* benefits. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until cooperation occurs.

ITEM 16. Amend subrule 65.23(1) as follows:

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65.23(1) Weekly or biweekly income and prospective budgeting. Households receiving benefits determined by prospective budgeting shall have the actual or converted amount of income that is received on a weekly or biweekly basis considered for that benefit month. *The department shall convert income and deductions that occur on a weekly or biweekly basis to monthly figures using family investment program procedures.*

ITEM 17. Amend rules 441—65.24(234) and 441—65.25(234) as follows:

441—65.24(234) Inclusion of foster children in household. Foster children living with foster parents will not be considered to be members of the food stamp assistance household unless the household elects to include the foster children in the food stamp household. Foster care payments received for foster children not included in the household will be excluded from the income of the household receiving the payment.

441—65.25(234) Effective date of change. A food stamp assistance change caused by, or related to, a public assistance grant change, will have the same effective date as the public assistance change.

ITEM 18. Amend subrule 65.27(1) as follows:

65.27(1) Applicant households. A member of an applicant household who without good cause voluntarily quits a job or reduces hours of work to less than 30 hours weekly within 30 days before the date the household applies for food stamp benefits shall be disqualified from participating in the food stamp assistance program according to the provisions of paragraphs 65.28(12)“a” and “b.”

ITEM 19. Amend rule 441—65.28(234) as follows:

Amend subrule 65.28(1) as follows:

65.28(1) Persons required to register. Each household member who is not exempt by subrule 65.28(2) shall be registered for employment at the time of application, and once every 12 months after initial registration, as a condition of eligibility. Registration is accomplished when the applicant signs a food stamp application form that contains a statement that all members in the household who are required to register for work are willing to register for work. This signature registers all members of that food stamp assistance household that are required to register.

Amend subrule **65.28(7)**, first unnumbered paragraph, as follows:

The department or its designee shall serve as the provider of employment and training services for nonexempt food stamp registrants.

Amend subrule 65.28(8) as follows:

Amend the introductory paragraph as follows:

65.28(8) Employment and training components. Employment and training components include individual job search, job club, educational services (GED/ABE/ESL), and Workforce Investment Act of 1998 (WIA) activities. The department shall offer food stamp employment and training components in counties having a monthly average of 500 or more mandatory work registrants. The department shall offer components in additional counties subject to the availability of sufficient state and federal funding to cover program costs. Availability of components may vary among the areas where employment and training is offered.

Amend paragraph “a,” introductory paragraph, as follows:

a. Job club. The food stamp employment and training job club shall be modeled after the family investment pro-

gram’s PROMISE JOBS job club. Employment and training service provider staff may require a participant who, for any reason, is absent during the classroom portion of job club to repeat the entire period of classroom training. Additional allowances as provided for by subrule 65.28(11) shall not be paid to these individuals.

Amend paragraph “b” as follows:

b. Educational services (GED/ABE/ESL). Persons referred to the job club component may elect to be referred to the educational services program. Educational services offered include General Educational Development (GED), Adult Basic Education (ABE), or English as a Second Language (ESL).

(1) The food stamp employment and training service provider shall individually assess persons requesting referral to this program. If it is determined that obtaining educational services would directly enhance the person’s likelihood of obtaining employment, the food stamp employment and training service provider shall refer the person to this program subject to available funds.

(2) Participation in the educational services program for eight consecutive weeks is equivalent to participation in two four-week employment and training components.

(3) The food stamp employment and training service provider shall assign to the job club component persons who fail to begin or to continue the educational program during the two four-week components.

Amend subrule **65.28(9)**, paragraph “j,” as follows:

j. Mandatory food stamp work registrants who are employed 60 or more hours per month.

Amend subrule **65.28(11)**, paragraph “b,” as follows:

b. The department shall authorize the employment and training service provider to reimburse the provider of care directly for the actual costs of dependent care expenses that the employment and training service provider determines to be necessary for the participation of a person in the components. Reimbursement shall not exceed \$200 for each child under two years of age and \$175 for each other dependent per four-week component. The employment and training service provider shall only reimburse a person not included in the food stamp assistance household. The employment and training service provider shall only reimburse participants in the IJS component during the regular school term to the extent that the contacts required in this component cannot be made while dependent children who attend school are in school. The employment and training service provider shall defer a person from participation in a component if the dependent care expenses exceed the dependent care reimbursement. Deferment shall continue until a suitable component is available or circumstances change and monthly dependent care expenses no longer exceed the reimbursement amount. Reimbursement is dependent on sufficient state and federal funding to cover the costs.

Amend subrule **65.28(12)**, paragraph “a,” introductory paragraph, as follows:

a. When a person has refused or failed without good cause to comply with the work registration or employment and training requirements in this rule, that person shall be ineligible to participate in the food stamp assistance program as follows:

Amend subrule 65.28(13) as follows:

65.28(13) Noncompliance with comparable requirements. The department shall treat failure to comply with an unemployment compensation requirement that is comparable to a food stamp assistance work registration or employment and training requirement as a failure to comply with the

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corresponding food stamp assistance requirement. Disqualification procedures in subrule 65.28(12) shall be followed.

Amend subrule 65.28(16), introductory paragraph, as follows:

65.28(16) Applicants for supplemental security income (SSI) and food stamps assistance. Household members who are jointly applying for SSI and for food stamps assistance shall have the requirements for work registration waived until:

ITEM 20. Amend subrules 65.29(2) and 65.29(10) as follows:

65.29(2) Job insurance benefits. When the department of human services uses information provided by the department of employment services workforce development to verify job insurance benefits, the benefits shall be considered received the second day after the date that the check was mailed by job service. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day.

When the client notifies the agency that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A benefit adjustment shall be made when indicated. The client must report the discrepancy prior to before the benefit month or within ten days of the date on the Notice of Decision, PA-3102-0 Form 470-0485, 470-0486, or 470-0486(S), applicable to the benefit month, whichever is later, in order to receive corrected benefits.

65.29(10) Welfare reform and regular household honorarium income. All moneys paid to a food stamp assistance household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

ITEM 21. Amend subrules 65.30(3) and 65.30(4) as follows:

65.30(3) Resources of SSI and FIP household members. Notwithstanding anything to the contrary in these rules or in federal regulations, all resources of SSI or FIP recipients are excluded. For food stamp assistance purposes, those members' resources, if identified, cannot be included when a household's total resources are calculated.

65.30(4) Earned income tax credits. Notwithstanding anything to the contrary in these rules or regulations, earned income tax credits (EITC) shall be excluded from consideration as a resource for 12 months from the date of receipt if:

a. the person receiving the EITC was participating in the food stamp assistance program at the time the credits were received; and

b. The person participated in the program continuously during the 12-month period.

ITEM 22. Amend rule 441—65.31(234), introductory paragraph, as follows:

441—65.31(234) Homeless meal providers. When a local office of the department is notified that an establishment or shelter has applied to be able to accept food stamps assistance benefits for homeless persons, staff shall obtain a written statement from the establishment or shelter. The statement must contain information on how often meals are served by the establishment or shelter, the approximate number of meals served per month, and a statement that the establishment or shelter does serve meals to homeless persons. This information must be dated and signed by a person in charge of the administration of the establishment or shelter and give the person's title or function with the establishment.

ITEM 23. Amend rule 441—65.37(234) as follows:

Amend the introductory paragraph as follows:

441—65.37(234) Eligibility of noncitizens. The following groups of aliens who are lawfully residing in the United States and are otherwise eligible are eligible for food stamp assistance benefits:

Amend subrule 65.37(4) as follows:

65.37(4) Aliens aged 18 or under, regardless of their immigration date. The department shall exclude the income and resources of a sponsor when determining food stamp assistance eligibility and benefits for an alien aged 18 or under.

ITEM 24. Amend rule 441—65.39(234) as follows:

441—65.39(234) Categorical eligibility. Notwithstanding anything to the contrary in these rules or regulations, recipients of state or local general assistance (GA) programs are subject to categorical eligibility provisions of the food stamp assistance program provided that the state or local program:

1. has Has income limits at least as stringent as the food stamp assistance gross income test; and

2. gives Gives assistance other than one-time emergency payments that cannot be given for more than one continuous month.

ITEM 25. Amend rule 441—65.46(234) as follows:

Amend the introductory paragraph as follows:

441—65.46(234) Disqualifications. Notwithstanding anything to the contrary in these rules, food stamp assistance program violation disqualifications for persons who are not participating in the food stamp assistance program shall be imposed in the same manner as food stamp program violation disqualifications are imposed for persons who are participating in the food stamp assistance program.

Amend subrules 65.46(2), 65.46(3), and 65.46(5) as follows:

65.46(2) Conviction on trafficking in food stamp assistance benefits. The penalty for any individual convicted of trafficking in food stamp assistance benefits of \$500 or more shall be permanent disqualification.

65.46(3) Receiving or attempting to receive multiple benefits. An individual found to have made a fraudulent statement or representation with respect to identity or residency in order to receive multiple benefits shall be ineligible to participate in the food stamp assistance program for a period of ten years.

65.46(5) Conviction of trading firearms, ammunition or explosives for coupons benefits. The penalty for any individual convicted of trading firearms, ammunition or explosives for food stamp assistance benefits shall be permanent disqualification.

ITEM 26. Amend rules 441—65.50(234) and 441—65.52(234) as follows:

441—65.50(234) No increase in food stamp benefits. When a household's means-tested federal, state, or local public assistance cash benefits are reduced because of a failure to perform an action required by the public assistance program, the department shall reduce the household's food stamp assistance benefit allotment by 10 percent as provided for in federal regulations at 7 CFR 273.11(j), (k), and (l) as amended to June 1, 2001, for the duration of the other program's penalty.

441—65.52(234) Systematic alien verification for entitlements (SAVE) program. The department shall participate in the SAVE program established by the U.S. Bureau of Citizenship and Immigration and Naturalization Service (INS BCIS) as specified in 7 CFR 272.11 as amended to November 21, 2000, in order to verify the validity of documents pro-

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vided by aliens applying for food stamp assistance benefits with the central data files maintained by INS BCIS.

ARC 2826B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness,” Chapter 63, “Residential Care Facilities for the Mentally Retarded,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (IFC/PMI),” Iowa Administrative Code.

The proposed amendments stipulate that long-term care facilities cannot restrict the manner in which a resident obtains prescribed medications. The proposed amendments will allow veterans, residents with health insurance policies that provide medications in bulk form, residents who receive their medications through the state’s Medicaid program, and all Iowans to use their prescribed medications in the facilities in which they reside.

The proposed amendments were presented to the State Board of Health for initial review at the Board’s September 10, 2003, meeting.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2003. Such written material should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on October 24, 2003, at 10 a.m. in Conference Room 319 of the Lucas State Office Building, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Inspections and Appeals and advise of specific needs.

After careful review of the amendments, the Department is unable to determine whether adoption of the amendments will create any financial burden on the regulated industries. However, the Department does believe that adoption of the proposed amendments will reduce the costs of resident medications by allowing for the use of resident medications regardless of the source or packaging method.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are proposed.

ITEM 1. Amend rule 481—57.47(135C) as follows:

481—57.47(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. ~~The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. The facility shall not restrict the manner in which the resident’s prescriptions are purchased, provided, packaged, or otherwise obtained by the resident.~~ (II)

ITEM 2. Amend rule 481—58.51(135C) as follows:

481—58.51(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. ~~The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.~~

~~A facility shall not require the repackaging of medication dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. The facility shall not restrict the manner in which the resident’s prescriptions are purchased, provided, packaged, or otherwise obtained by the resident.~~ (II)

ITEM 3. Amend subrule 62.23(21) as follows:

62.23(21) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and pharmacy. ~~The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. The facility shall not restrict the manner in which the resident’s prescriptions are purchased, provided, packaged, or otherwise obtained by the resident.~~ (II)

ITEM 4. Amend rule 481—63.45(135C) as follows:

481—63.45(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. ~~The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. The facility shall not restrict the manner in which a resident’s prescriptions are purchased, provided, packaged, or otherwise obtained by the resident.~~ (II)

ITEM 5. Amend subrule 65.25(17) as follows:

65.25(17) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy. ~~The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. The facility shall not restrict the manner in which the resident’s prescriptions are purchased, provided, packaged, or otherwise obtained by the resident.~~ (II)

ARC 2825B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness," and Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

The proposed amendments eliminate references to the resident's physician's or qualified mental retardation professional's documentation of impairments serving as the basis for altering a resident's rights and responsibilities. The amendments provide that a resident shall only be declared incompetent by a court of law or in accordance with provisions contained in 42 CFR 483.10. The Code of Federal Regulations stipulates that, in the case of a resident who has not been adjudicated incompetent under the laws of the state, any legal-surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.

The proposed amendments were presented to the State Board of Health for initial review at the Board's September 10, 2003, meeting.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2003. Such written material should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to dwnering@dia.state.ia.us.

The Department does not believe that adoption of the proposed amendments will create any financial burden on the Department, the regulated entities, or residents in long-term care facilities. Adoption of the proposed amendments will further protect a resident's rights under the federal rules.

The proposed amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are proposed.

ITEM 1. Amend subrule 57.48(1) as follows:

57.48(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10.~~ (II)

ITEM 2. Amend subrule 58.52(1) as follows:

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10.~~ (II)

ITEM 3. Amend subrule **62.23(22)**, paragraph "a," as follows:

a. Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's legal guardian when a resident is adjudicated incompetent in accordance with state law ~~or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10.~~ (II)

ITEM 4. Amend subrule 63.46(1) as follows:

63.46(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, ~~or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10.~~ (II)

ARC 2796B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 5, "Regulation of Insurers—General Provisions," Iowa Administrative Code.

The amendment to subrule 5.24(3) corrects a citation error that resulted from the restructuring of rule 191—5.24(507C).

The amendments to rule 191—5.25(505) provide guidance to insurers relative to the appropriate use of indemnification and arbitration language in agreements with independent certified public accountants and provide additional guidance in the completion of notes to financial statements filed with the Commissioner. These amendments adopt the 1998 and 2001 amendments to the NAIC model regulation.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2003. Such written materials should be directed to Kim Cross, Insurance Division, Department of Commerce, 330 Maple Street, Des Moines, Iowa 50319, or may be trans-

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mitted via E-mail to kim.cross@iid.state.ia.us or via facsimile to (515)281-3059.

A public hearing will be held at 10 a.m. on October 22, 2003, at the office of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Kim Cross no later than October 21, 2003, to be placed on the agenda.

These amendments are intended to implement Iowa Code chapter 505.

The following amendments are proposed.

ITEM 1. Amend subrule 5.24(3) as follows:

5.24(3) Any insurer subject to an order under subrule 5.24(2) may request, pursuant to rule 191—3.5 3.4(17A, 502, 505), review of that order. Any ensuing hearing shall not be open to the public, unless the insurer requests otherwise.

ITEM 2. Amend subrule **5.25(2)** by adopting the following **new** definition in alphabetical order:

“Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

ITEM 3. Amend subrule **5.25(2)**, definition of “insurer,” as follows:

“Insurer” means a licensed insurer under Title ~~XX~~ **XIII** of the Iowa Code, except entities organized under Iowa Code chapters 512A, 512B, 518, and 518A.

ITEM 4. Amend subrule **5.25(4)**, paragraph “f,” as follows:

f. Notes to financial statements. These notes shall be *those* required by the appropriate *National Association of Insurance Commissioners* (NAIC) annual statement instructions and *the NAIC accounting practices and procedures manual*. *The notes shall include: any other notes required by generally accepted accounting principles and shall also include:*

(1) A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Iowa Code sections 508.11 and 515.63 with a written description of the nature of these ~~difficulties~~ *differences*.

(2) No change.

ITEM 5. Amend subrule **5.25(5)**, first unnumbered paragraph, as follows:

The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of Title ~~XX~~ **XIII** of the Iowa Code and administrative rules thereunder that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance division, specifying such exceptions as the accountant may believe appropriate.

ITEM 6. Amend subrule 5.25(6) as follows:

5.25(6) Qualifications of independent certified public accountant.

a. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that:

(1) *is Is* not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; *or*

(2) *Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.*

b. Except as otherwise provided herein, independent certified public accountants shall be recognized as qualified as long as they conform to the standards of their profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and rules and regulations and code of ethics and rules of professional conduct of the Iowa accountancy examining board, or similar code.

c. *A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Iowa Code chapter 507C, the mediation or arbitration provisions shall operate at the option of the statutory successor.*

e d. No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

(1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or

(3) Number of jurisdictions in which the insurer transacts business.

The requirements of this paragraph ~~shall become~~ *became* effective on August 28, 1993.

d e. The commissioner shall not recognize as a qualified independent certified public accountant, ~~nor~~ *or* accept any annual audited financial report prepared in whole or in part by, any natural person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

e f. The commissioner of insurance, under 191—Chapter 3, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the opinion of the accountant on the financial statements in the annual audited financial report made pursuant to this rule and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this rule.

ARC 2794B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8 and 508.36, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 5, “Regulation of Insurers—General Provisions,” Iowa Administrative Code.

The new rule provides guidance to domestic insurers and fraternal benefit societies doing business in this state and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this state relative to guidelines and standards for statements of actuarial opinion and supporting memoranda.

The new rule, in part, omits the substance of current subrules 5.34(6) and 5.34(7) and incorporates new language relating to the appointed actuaries’ ability to utilize their professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. The new rule will require all companies doing business in Iowa to file an actuarial opinion and memorandum that contains an asset adequacy analysis in accordance with the rule.

Any interested person may make written suggestions or comments on the proposed rule on or before October 21, 2003. Such written materials should be directed to Kim Cross, Insurance Division, Department of Commerce, 330 Maple Street, Des Moines, Iowa 50319, or may be transmitted via E-mail to kim.cross@iid.state.ia.us or via facsimile to (515)281-3059.

A public hearing will be held at 10 a.m. on October 22, 2003, at the office of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Kim Cross no later than October 21, 2003, to be placed on the agenda.

This rule is intended to implement Iowa Code section 508.36.

The following amendment is proposed.

Rescind rule 191—5.34(508) and adopt the following **new** rule in lieu thereof:

191—5.34(508) Actuarial opinion and memorandum.

5.34(1) Purpose and effective date. The purpose of this rule is to prescribe:

- a. Requirements for statements of actuarial opinion that are to be submitted in accordance with Iowa Code section 508.36 and for memoranda in support thereof;
- b. Rules applicable to the appointment of an appointed actuary; and
- c. Guidance as to the meaning of “adequacy of reserves.”

5.34(2) Authority. This rule is issued pursuant to the authority vested in the commissioner of insurance under Iowa Code section 508.36. This rule will take effect for annual statements for the year 2004.

5.34(3) Scope. This rule shall apply to all life insurance companies and fraternal benefit societies doing business in

this state and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this state.

This rule shall be applied in a manner that allows the appointed actuary to utilize the actuary’s professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner’s judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after [insert the effective date of this rule]. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with subrule 5.34(6), and a memorandum in support thereof in accordance with subrule 5.34(7), shall be required each year.

5.34(4) Definitions. As used in this rule:

“Actuarial opinion” means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with subrule 5.34(6) and with applicable actuarial standards.

“Actuarial Standards Board” means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

“Annual statement” means that statement required by Iowa Code section 508.11 to be filed annually by the company with the office of the commissioner.

“Appointed actuary” means any individual who is appointed or retained in accordance with the requirements set forth in 5.34(5)“c” to provide the actuarial opinion and supporting memorandum as required by Iowa Code section 508.36.

“Asset adequacy analysis” means an analysis that meets the standards and other requirements referred to in 5.34(5)“d.”

“Commissioner” means the insurance commissioner of this state.

“Company” means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

“Qualified actuary” means any individual who meets the requirements set forth in 5.34(5)“b.”

5.34(5) General requirements.

- a. Submission of statement of actuarial opinion.

(1) There is to be included on or attached to page 1 of the annual statement for each year beginning with the statement filed as of December 31, 2004, the statement of an appointed actuary, entitled “Statement of Actuarial Opinion,” setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with 5.34(6).

(2) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

- b. Qualified actuary. A “qualified actuary” is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

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(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

1. Violated any provision of, or any obligation imposed by, the insurance code or other law in the course of dealing as a qualified actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated incompetency, lack of cooperation, untrustworthiness to act as a qualified actuary;

4. Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

5. Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under 5.34(5)“b”(4).

c. Appointed actuary. An “appointed actuary” is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements set forth in 5.34(5)“b.” Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in 5.34(5)“b.” If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

d. Standards for asset adequacy analysis. The asset adequacy analysis required by this rule shall:

(1) Conform to the standards of practice as promulgated from time to time by the Actuarial Standards Board and any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with 5.34(6);

(2) Be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

e. Liabilities to be covered.

(1) Under the authority of Iowa Code section 508.36, the statement of actuarial opinion shall apply to all in-force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, part 1, and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Iowa Code sec-

tion 508.36, the company shall establish the additional reserve.

(3) Additional reserves established under 5.34(5)“e”(2) and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

5.34(6) Statement of actuarial opinion based on an asset adequacy analysis.

a. General description. The statement of actuarial opinion submitted in accordance with this subrule shall consist of:

(1) A paragraph identifying the appointed actuary and the actuary’s qualifications (see 5.34(6)“b”(1));

(2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary’s work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis (see 5.34(6)“b”(2)), and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see 5.34(6)“b”(3))), supported by a statement of each such expert in the form prescribed by 5.34(6)“e”; and

(4) An opinion paragraph expressing the appointed actuary’s opinion with respect to the adequacy of the supporting assets to mature the liabilities (see 5.34(6)“b”(6)).

(5) One or more additional paragraphs will be needed in individual company cases as follows:

1. If the appointed actuary considers it necessary to state a qualification of opinion;

2. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

3. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release;

4. If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

b. Recommended language. The following paragraphs shall be included in the statement of actuarial opinion in accordance with this subrule. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses the actuary’s professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this subrule.

(1) The opening paragraph should generally indicate the appointed actuary’s relationship to the company and qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

“I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar

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with the valuation requirements applicable to life and health insurance companies.”

For a consulting actuary, the opening paragraph should include a statement such as:

“I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation re-

quirements applicable to life and health insurance companies.”

(2) The scope paragraph should include a statement such as:

“I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20____. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.”

Asset Adequacy Tested Amounts – Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
<u>Exhibit 8</u>					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability—Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
<u>Exhibit 9</u>					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
<u>Exhibit 10</u>					
Premiums and Other Deposit Funds (Column 5, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Other (Column 6, Line 14)					
Supplemental Contracts and Annuities (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 10 (Column 1, Line 14)					
<u>Exhibit 11, Part 1</u>					
1 Life (Page 3, Line 4.2)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					
IMR (General Account, Page ____ Line ____)					
(Separate Accounts, Page ____ Line ____)					
AVR (Page ____ Line ____)		(c)			
Net Deferred and Uncollected Premium					

Notes:

- The additional actuarial reserves are the reserves established under subparagraph (2) of 5.34(5)“e.”
- The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in paragraph 5.34(5)“d,” by means of symbols that should be defined in footnotes to the table.
- Allocated amount of asset valuation reserve (AVR).

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(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:

"I have relied on [name], [title] for [e.g., 'anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios' or 'certain critical aspects of the analysis performed in conjunction with forming my opinion'], as certified in the attached statement. I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts in the form prescribed by 5.34(6)"e."

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:

"In forming my opinion on [specify types of reserves], I relied upon data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary."

The section shall be accompanied by a statement by each person relied upon in the form prescribed by 5.34(6)"e."

(6) The opinion paragraph shall include a statement such as:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

"1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

"2. Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

"3. Meet the requirements of the insurance law and rules of the state of [state of domicile]; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

"4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

"5. Include provision for all actuarial reserves and related statement items which ought to be established.

"The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such pol-

icies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)

"The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

c. Assumptions for new issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this subrule.

d. Adverse opinion. If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

e. Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons upon whom the actuary is relying and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

f. Alternate option.

(1) Iowa Code section 508.36 gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subparagraph 5.34(6)"b"(6), item "3," the commissioner may make one or more of the following additional approaches available to the opining actuary:

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1. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

2. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met.” If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. The statement shall remain valid until rescinded or modified by the commissioner. A rescission or modification of the statement shall be issued no later than March 31 of the year it is first effective. After that statement is issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year the opinion is to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

3. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the required comparison as specified by this state.”

- If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in 5.34(6)“f”(1)“3,” second bulleted paragraph) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

- If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under National Association of Insurance Commissioners codification standards adopted in rule 191—5.15(508,512B,514,514B,515,520). Gross nationwide reserves are the total reserves calculated for the total company in-force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall include at least the following:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

- The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

- If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the

appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

- The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Notwithstanding 5.34(6)“f”(1), the commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company’s expense to prepare and file an opinion.

5.34(7) Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary.

a. General.

(1) In accordance with Iowa Code section 508.36, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall not be returned to the company after such examination and shall not be considered a record of the insurance division or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuary’s own memorandum, memoranda, prepared and signed by other actuaries who are qualified within the meaning of 5.34(5)“b” with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company, and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee or a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for the current year or the preceding three years.

(5) In accordance with Iowa Code section 508.36, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in 5.34(7)“c.” The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

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b. Details of the memorandum section documenting asset adequacy analysis (5.34(6)). When an actuarial opinion under 5.34(6) is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in 5.34(5)“d” and any additional standards under this rule. It shall specify:

(1) For reserves:

1. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
2. Source of liability in force;
3. Reserve method and basis;
4. Investment reserves;
5. Reinsurance arrangements;
6. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;
7. Documentation of assumptions to test reserves for the following:

- Lapse rates (both base and excess);
- Interest crediting rate strategy;
- Mortality;
- Policyholder dividend strategy;
- Competitor or market interest rate;
- Annuitization rates;
- Commissions and expenses; and
- Morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

(2) For assets:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
2. Investment and disinvestment assumptions;
3. Source of asset data;
4. Asset valuation bases; and
5. Documentation of assumptions made for:
 - Default costs;
 - Bond call function;
 - Mortgage prepayment function;
 - Determining market value for assets sold due to disinvestment strategy; and
 - Determining yield on assets acquired through the investment strategy.

The documentation of assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

(3) For the analysis basis:

1. Methodology;
2. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
3. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of “materiality” that was used in determining how vigorously to analyze different blocks of business);
4. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); and
5. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

(4) Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis.

(5) Conclusion(s).

c. Details of the regulatory asset adequacy issues summary.

(1) The regulatory asset adequacy issues summary shall include:

1. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserves as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary;

5. The methods used by the actuary to recognize the impact of reinsurance on the company cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equitylike features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

d. Conformity to standards of practice. The memorandum shall include the following statement: “Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.”

e. Use of assets supporting the interest maintenance reserve and the asset valuation reserve. An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

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The amount of assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

f. Documentation. The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

This rule is intended to implement Iowa Code section 508.36.

ARC 2801B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 599, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 20, “Property and Casualty Insurance Rate and Form Filing Procedures,” Iowa Administrative Code.

The proposed rules are intended to implement the provisions of 2003 Iowa Acts, House File 599, known as the Iowa FAIR Plan, which applies retroactively to October 7, 1968, to validate action taken under the Iowa basic property insurance inspection program adopted by the Commissioner. The rules are intended to establish procedures and requirements for a mandatory risk-sharing facility for basic property insurance coverage, as well as encourage the improvement of and reasonable loss prevention measures for properties located in Iowa. The rules formalize the operations and procedures of the FAIR Plan and its Governing Committee to ensure the availability of basic property insurance for property located in this state.

These rules do not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on Thursday, October 23, 2003. The Division is located at 330 Maple, Des Moines, Iowa 50319.

Any interested person may make written comments on the proposed rules on or before 12 noon on October 23, 2003. Written comments may be sent to Angela Burke Boston, Assistant Commissioner, 330 Maple, Des Moines, Iowa 50319. Comments may also be submitted electronically to angela.burke.boston@iid.state.ia.us.

These rules are intended to implement 2003 Iowa Acts, House File 599.

The following **new** rules are proposed.

DIVISION II
IOWA FAIR PLAN ACT

191—20.41(515,515F) Purpose. This division is intended to implement and interpret 2003 Iowa Acts, House File 599, for the purpose of establishing procedures and requirements for a mandatory risk sharing facility for basic property insur-

ance coverage. This division is also intended to encourage improvement of and reasonable loss prevention measures for properties located in Iowa and to further orderly community development.

191—20.42(515,515F) Scope. This division shall apply to all insurers licensed to write property insurance in Iowa.

191—20.43(515,515F) Definitions.

“Basic property insurance” means insurance against direct loss to property as defined in the standard fire policy and extended coverage, vandalism, and malicious mischief endorsements; homeowners insurance; and such other coverage or classes of insurance as may be added to the FAIR Plan by the commissioner. Basic property insurance shall include:

1. Coverage provided in the customary fire policy and in the customary extended coverage and builders risk endorsements.
2. Coverage against loss or damage by burglary or theft, or both.
3. Coverage at least equivalent to that provided in a modified coverage form homeowners policy.

“Habitational risk” means:

1. Dwellings, permanent or seasonal, designed for occupancy by not more than four families or containing not more than four apartments.
2. Private outbuildings used in connection with any of the risks described in “1.”
3. Trailer homes at a fixed location.
4. Household and personal property in risks described in “1” to “3.”

5. Tenants’ contents in dwellings or apartment houses.

“Iowa FAIR Plan” or “the Plan” means the nonprofit, unincorporated mandatory risk-sharing facility established by this division to provide for basic property insurance.

“Location” means a single building and its contents, or contiguous buildings and their contents, under one ownership.

“Manufacturing risks” means those risks eligible to be written under the customary manufacturing business interruption policy forms approved by the commissioner. The following are not considered manufacturing risks:

1. Dry cleaning and laundering—Carpet, rug, furniture, or upholstery cleaning; diaper service or infants’ apparel laundries; dry cleaning; laundries; linen supply.
2. Installation, servicing and repair—Electrical equipment; electronic equipment; glazing; household furnishings and appliances; office machines; plumbing, heating and air conditioning; protective systems for premises, vaults and safes.
3. Laboratories—Blood banks; dental laboratories; medical or X-ray laboratories.
4. Duplicating or similar services—Blueprinting and photocopying services; bookbinding; electrotyping; engraving; letter service (mailing or addressing companies); linotype or hand composition; lithographing; photo engraving; photo finishing; photographers (commercial).
5. Warehousing—Cold storage (locker establishments); cold storage warehouse; furniture or general merchandise warehouse.

6. Miscellaneous—Barber shops; beauty parlors; cemeteries; dog kennels; electroplating; equipment rental (not contractors’ equipment); film and tape rental; funeral directors; galvanizing, tinning, detinning; radio broadcasting, commercial wireless and television broadcasting; taxidermists; telephone or telegraph companies; textiles (bleaching,

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dyeing, mercerizing or finishing of property of others); veterinarians and veterinary hospitals.

"Motor vehicles" means vehicles which are self-propelled.

"Weighted premiums written" means:

1. Gross direct premiums less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits, with respect to property in this state excluding premiums on risks insured under the Plan, for basic property insurance, for homeowners multiple peril policies, for farm dwelling policies and for the basic property insurance premium components of all other multiple peril policies.

2. In addition, 100 percent of the premiums obtained for homeowners multiple peril policies shall be added to 100 percent of the premiums obtained for basic property insurance and the basic property insurance premium components of all other multiple peril policies. The basic year for the computation shall be the first preceding calendar year.

191—20.44(515,515F) Eligible risks.

20.44(1) All risks at a fixed location shall be eligible for inspection and considered for insurance under the Plan except motor vehicles, inland marine risks, and manufacturing risks as defined above.

20.44(2) The maximum limits of coverage for the type of basic property insurance for customary fire and extended coverage which may be placed under the Plan are those established by the governing committee from time to time.

20.44(3) The maximum limits of coverage for the type of basic property insurance for burglary and theft which may be placed under the Plan are those established by the governing committee from time to time.

20.44(4) The maximum limits of coverage for the type of basic property insurance for homeowners coverage which may be placed under the Plan are those established by the governing committee from time to time.

191—20.45(515,515F) Membership.

20.45(1) Every insurer licensed to write one or more components of basic property insurance shall be considered a member of the Plan. Any other insurer may, upon application to and approval by the governing committee, become a member.

20.45(2) An insurer's membership terminates when the insurer is no longer authorized to write basic property insurance in Iowa, but the effective date of termination shall be the last day of the fiscal year of the Plan in which termination occurs. Any insurer so terminated shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

20.45(3) Any voluntary insurer member may terminate its membership only as of the last day of the fiscal year of the Plan by giving written notice to the Plan 30 days prior to the last day of the fiscal year of the Plan. The governing committee upon a majority vote may terminate the membership of a voluntary insurer. Any such terminated member shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

20.45(4) Subject to the approval of the commissioner, the governing committee may charge a reasonable annual membership fee.

191—20.46(515,515F) Administration.

20.46(1) The Plan shall be administered by the governing committee, subject to supervision of the commissioner, and operated by a manager appointed by the governing committee.

20.46(2) The governing committee shall consist of seven members, each of whom shall serve for a period of one year or until a successor is elected or designated. Each member shall have one vote.

191—20.47(515,515F) Duties of the governing committee.

20.47(1) The governing committee shall meet as often as may be required to perform the general duties of the administration of the Plan, or on the call of the commissioner. Four members of the committee present or by proxy shall constitute a quorum. Members of the committee who choose to appoint a proxy shall give a written proxy to the person elected to act as proxy. The written proxy shall then be filed with the governing committee, thus ensuring the validity of the proxy's actions as the governing committee performs its duties.

20.47(2) The governing committee shall be empowered to appoint a manager, who shall serve at the pleasure of the committee, to budget expenses, levy assessments, disburse funds, and perform all other duties of the Plan. The adoption of or substantive changes in pension plans or employee benefit programs for the manager and staff shall be subject to approval of the governing committee.

20.47(3) The governing committee may designate, with the approval of the commissioner, a rate service organization as defined in Iowa Code chapter 515F, to make inspections as required under the Plan and to perform such other duties as may be authorized by the governing committee.

20.47(4) The manager shall annually prepare an operating budget which shall be subject to approval of the governing committee.

20.47(5) The governing committee shall submit to the commissioner periodic reports setting forth information as the commissioner may request. On or before April 1 of each year, the governing committee shall submit a report summarizing any new programs or reforms in operation undertaken during the preceding calendar year in order to comply with any new legislation, regulations or directives affecting the Plan. This report shall contain a statistical tabulation on business written in accordance with the Plan.

20.47(6) The governing committee shall separately code all policies written by the Plan so that appropriate records may be compiled for purposes of performing loss prevention and other studies of the operation of the Plan.

20.47(7) The governing committee shall authorize the manager to file rates, surcharge schedules and forms for prior approval by the commissioner.

20.47(8) The governing committee shall prepare such agreements and contracts as may be necessary for the execution of this division consistent with its provisions.

191—20.48(515,515F) Annual and special meetings.

20.48(1) There shall be an annual meeting of the insurers on a date fixed by the governing committee at which time members may be chosen.

20.48(2) A special meeting shall be called by the governing committee within 40 days after receipt of written request from any 10 insurers, not more than one of which may be in a group under the same management or ownership.

20.48(3) The time and place of all meetings shall be reasonable. Twenty days' notice of an annual or special meeting shall be given in writing by the governing committee to all insurers defined above. Four members present in person or by proxy shall constitute a quorum. Voting by proxy shall be permitted.

INSURANCE DIVISION[191](cont'd)

20.48(4) Any matter not inconsistent with the law or this division may be proposed and voted upon at any special meeting of the committee. Notice of any such proposal shall be mailed to each insurer not less than 20 days prior to the final date fixed by the committee for voting thereon.

191—20.49(515,515F) Application for insurance.

20.49(1) Any person who has an insurable interest in an eligible risk in property permitted to be written in the Plan and who has received within the last six months a notice of rejection, nonrenewal or cancellation from an insurer, may apply for insurance by the Plan.

20.49(2) An inspection need not be made if the governing committee determines that insurance can be provided for specified classes of risks on the basis of representations of the applicant or insurance producer.

20.49(3) The Plan may bind coverage. The Plan may wait until receipt of the inspection report or receipt of additional underwriting information before determining whether to bind coverage. Coverage will be bound by the Plan by acknowledgement to the producer.

191—20.50(515,515F) Inspection procedure.

20.50(1) The inspection by the Plan shall be without cost to the applicant.

20.50(2) The manner and scope of the inspection shall be prescribed by the Plan with the approval of the commissioner.

20.50(3) An inspection report shall be made for each property inspected covering pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. Representative photographs may be taken during the inspection to indicate the pertinent features of building, construction, maintenance, occupancy, and surrounding property.

20.50(4) After the inspection, a copy of the completed inspection report and any relevant photographs shall be kept on file by the Plan. The report shall include a description of any deficient physical condition changes proposed by the inspector. A copy of the inspection report shall be made available to the applicant or producer upon request.

191—20.51(515,515F) Procedure after inspection and receipt of application.

20.51(1) After receipt of the application, the inspection report, and any additional underwriting information requested from the applicant, the Plan shall within five business days complete and send to the applicant an action report advising the applicant of one of the following:

a. That the risk is acceptable. If the inspection reveals substandard conditions, appropriate charges may be imposed, but the report shall specify the improvements necessary for removal of each such charge.

b. That the risk is declined unless reasonable improvements noted in the action report are made by the applicant and confirmed by reinspection.

c. That the risk is declined because it fails to meet reasonable underwriting standards as set forth in 20.52(515, 515F). Reasonable underwriting standards as set forth in 20.52(515,515F) shall not include neighborhood or area location or any environment hazard beyond the control of the property owner.

20.51(2) If the risk is accepted, the action report shall advise the applicant of:

a. The amount of coverage the Plan agrees to write.

b. The amount of coverage the Plan agrees to write if specified improvements are made.

c. The amount of coverage the Plan agrees to write only if a large or special deductible is agreed to by the applicant.

20.51(3) If the risk is accepted, the Plan, upon receipt of the premium, shall deliver the policy to the applicant or to the licensed producer designated by the applicant for delivery to the applicant. The Plan shall remit the commissions to the licensed producer designated by the applicant.

191—20.52(515,515F) Reasonable underwriting standards for property coverage.

20.52(1) The following characteristics may be used in determining whether a risk is acceptable for property coverage. Where there is more than one cause for declination, all causes shall be listed and complied with before the property may be accepted for insurance purposes.

a. Physical condition of property; however, the mere fact that a property does not satisfy all current building code specifications will not, of itself, suffice as a reason for declination.

b. The property's present use as extended vacancy or extended unoccupancy of the property for 60 consecutive days. Properties that are vacant or unoccupied for more than 60 days may be insured while rehabilitation or reconstruction work is actively in process, meaning that the insured or owner should make monthly progress in order to complete the rehabilitation or reconstruction within a one-year time frame.

c. Other specific characteristics of ownership, condition, occupancy or maintenance that violate the law and that result in substantial increased exposure to loss. Any circumstance considered under this paragraph must relate to the peril insured against.

d. Characteristics of ownership or maintenance of building including any two of the following conditions:

(1) Failure to pay real estate taxes on a property after the taxes have been delinquent for one year or more. Real estate taxes shall not be deemed to be delinquent for this purpose even if they are due and constitute a lien so long as a grace period remains under local law during which such taxes may be paid without penalty.

(2) Failure, within the insured's control, to furnish water for 30 consecutive days or more.

(3) Failure, within the insured's control, to furnish heat for 30 consecutive days or more during the heating season.

(4) Failure, within the insured's control, to furnish public lighting for 30 consecutive days or more.

e. Physical condition of buildings which results in an outstanding order to vacate, in an outstanding demolition order or in being declared unsafe in accordance with the applicable law.

f. One or more of the conditions for nonrenewal as listed in 20.54(515,515F) currently exist. The Plan shall, upon notice that conditions at the buildings have changed, consider new application for coverage.

g. Vandalism and malicious mischief coverage shall not be provided for a dwelling or commercial property where the property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period.

h. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

i. Any other guidelines which have been approved by the commissioner.

20.52(2) Reserved.

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191—20.53(515,515F) Reasonable underwriting standards for liability coverage.

20.53(1) The following characteristics may be used in determining whether a risk is acceptable for liability insurance on homeowner policies:

- a. Broken, cracked, uneven or otherwise faulty steps, porches, decks, sidewalks, patios and similar areas.
- b. Downspouts or drains which discharge onto sidewalks or driveways.
- c. Unsafe conditions including inadequate lighting of stairways.
- d. Animals known to be vicious or animals that have caused a liability claim.
- e. Swimming pools or private ponds not fenced in accordance with local regulations.
- f. Unsafe, or the absence of, handrails.
- g. Junk cars, empty refrigerators, trampolines or other potentially dangerous objects in the yard which are an attraction to children.
- h. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.
- i. Any other guidelines which have been approved by the commissioner.

20.53(2) Liability insurance shall only be provided as contained in the Iowa FAIR Plan homeowners policy.

20.53(3) Liability insurance shall not be provided for risks with any of the deficiencies set forth in paragraphs 20.53(1)“a” through “g,” as disclosed by the application or inspection, until the deficiencies have been corrected.

20.53(4) Liability insurance may not be provided where there is a business operating at the insured location, unless the applicant has in force a business liability policy with limits of at least \$100,000 per occurrence providing premises liability coverage.

20.53(5) Liability insurance shall not be provided where the applicant owns three or more horses or other riding animals, unless the applicant has in force a liability policy with limits of at least \$100,000 per occurrence providing coverage for the ownership and use of the horses or other riding animals.

191—20.54(515,515F) Cancellation; nonrenewal and limitations; review of eligibility.

20.54(1) The Plan shall not cancel or refuse to renew a policy issued by the Plan except for the following reasons:

- a. Facts as confirmed by inspection or investigation which would have been grounds for nonacceptance of the risk by the Plan had they been known to the Plan at the time of acceptance.
- b. Changes in the physical condition of the property or other changed conditions as confirmed by inspection or investigation that make the risk uninsurable due to paragraphs “l” and “m.”
- c. Nonpayment of premiums.
- d. At least 65 percent of the rental units in the building are unoccupied, and the insured has not received prior approval from the Plan of a rehabilitation program which necessitates a high degree of unoccupancy.
- e. Unrepaired damage exists and the insured has stated that repairs will not be made, or such time has elapsed as clearly indicates that the damage will not be repaired. The elapsed time under this paragraph is a length of time over 60 days where the damage remains unrepaired, unless there are known to be extenuating circumstances.
- f. After a loss, permanent repairs have not been commenced within 60 days following payment of the claim, un-

less there are known to be extenuating circumstances. The 60-day period starts upon acceptance of payment of the claim.

- g. Property has been abandoned for 90 days or more.
- h. Utilities such as electric, gas or water services have been disconnected or the insured has failed to pay an account for such services within 120 days.
- i. Real estate taxes have not been paid for a two-year period after the taxes have become delinquent. Real estate taxes shall not be deemed to be delinquent for this purpose if they are due and constitute a lien so long as a grace period remains under local law under which taxes may be paid without penalty.
- j. There is good cause to believe, based on reliable information, that the building will be burned for the purpose of collecting the insurance on the property. The removal of damaged salvageable items, such as normally permanent fixtures, from the building shall be considered under this paragraph when the insured can provide no reasonable explanation for such removal.

k. A named insured or loss payee or other person having a financial interest in the property being convicted of the crime of arson or a crime involving a purpose to defraud an insurance company. The fact that an appeal has been entered shall not negate the use of this paragraph.

l. The property has been subject to more than two losses, each loss amounting to at least \$500 or 1 percent of the insurance in force, whichever is greater, in the immediately preceding 12-month period, or more than three such losses in the immediately preceding 24-month period, provided that the cause of such losses is due to the conditions which are the responsibility of the owner named insured or due to the actions of any person defined as an insured under the policy.

m. Theft frequency in which there have been more than two thefts, each loss amounting to at least \$500, in a 12-month period.

n. Material misrepresentation in any statement to the Plan.

o. On homeowners policies, excessive theft or liability losses. If a given property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period, the Plan may convert the homeowners policy to a dwelling policy without vandalism and malicious mischief coverage.

20.54(2) The Plan shall terminate all insurance contracts in accordance with Iowa Code sections 515.80, 515.81A, and 515.81B.

20.54(3) At the completion of 36 months of coverage and prior to the completion of 48 months, each risk shall be reviewed for its eligibility for coverage in the voluntary market. The risk shall be submitted by the Plan to the producer of record, if any, for a search of the voluntary market. If the producer resubmits the risk to the Plan, it must be resubmitted with a new application and accompanied by a current rejection notice. The Plan shall reinspect the risk before coverage is provided.

191—20.55(515,515F) Assessments.

20.55(1) Participation and assessments by and upon each insurer in the Plan for losses and expenses in connection with Plan business shall be levied and assessed by the governing committee of the Plan on the basis of participation factors determined annually, giving effect to the proportion which such insurer's weighted premiums written bears to the aggregate weighted premiums written by all insurers in the Plan.

INSURANCE DIVISION[191](cont'd)

20.55(2) De minimis assessments. Any assessment of less than \$20 shall not be billed to an insurer, but will be accumulated as a deferred assessment until the cumulative amount deferred is at least \$20.

20.55(3) Late payment fee. Assessments shall be due and payable when billed. If any member fails to pay an assessment within 60 days after it is due, the insurer shall pay interest from the billing date at the rate of 1.5 percent per month. In the event that an insurer fails to pay any applicable late payment fee with an assessment, the amount of such unpaid late payment fee will be included in the amount of the insurer's next assessment.

20.55(4) Credits for voluntary writings. The Plan may develop a voluntary writing credit policy, subject to approval by the commissioner. Credits may be used as offsets to member company assessments made by the Plan.

191—20.56(515,515F) Commission.

20.56(1) Commission to the licensed producer designated by the applicant shall be 10 percent of all policy premiums. The Plan shall not license or appoint producers.

20.56(2) In the event of cancellation of a policy, or if an endorsement is issued which requires the premium to be returned to the insured, the producer shall refund proportionally to the Plan commissions on the return premium at the same rate at which such commissions were originally paid.

191—20.57(515,515F) Public education. In cooperation with the insurance commissioner, the Plan shall undertake a continuing education program with insurers, producers and consumers about the Plan's insurance program and its availability. All insurers and producers shall cooperate fully in the continuing education program. Such continuing education program will include the publication and distribution of literature:

1. Describing the Plan and its general operation;
2. Explaining the possible cost savings of obtaining insurance in the voluntary market; and
3. Advising of the availability of rate comparison charts.

191—20.58(515,515F) Cooperation and authority of producers.

20.58(1) Each insurer shall require its licensed producers to cooperate fully in the accomplishment of the intents and purposes of the Plan.

20.58(2) Licensed insurance producers shall not act as agents for the Plan.

20.58(3) Licensed insurance producers shall not do any of the following:

- a. Bind coverage for the Plan.
- b. Alter or change policies issued by the Plan.
- c. Settle losses of the Plan.
- d. Act on behalf of the Plan or commit the Plan to any course of action.

20.58(4) Licensed insurance producers shall assist applicants who need to apply for coverage under the Plan, and shall submit applications that meet the requirements under rule 20.49(515,515F). Producers shall follow the rules and procedures of the Plan.

191—20.59(515,515F) Review by commissioner. The governing committee shall report to the commissioner the name of any insurer or producer which fails to comply with the provisions of the Plan or with any rules prescribed thereunder by the governing committee or to pay within 30 days any assessment levied.

191—20.60(515,515F) Indemnification. Each person serving on the governing committee or any of its subcommittees,

each member of the Plan, and the manager and each officer and employee of the Plan shall be indemnified by the Plan against all cost, settlement, judgment, and expense actually and necessarily incurred by that person in connection with the defense of any action, suit, or proceeding in which that person is made a party by reason of that person's being or having been a member of the governing committee or a member or manager or officer or employee of the Plan, except in relation to matters as to which that person has been judged in an action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's duties as a member of the governing committee or as a member, manager, officer or employee of the Plan. This indemnification shall not apply to any loss, cost or expense on insurance policy claims under the Plan. Indemnification under this rule shall not be exclusive of other rights to which the member, manager, officer, or employee may be entitled as a matter of law.

These rules are intended to implement 2003 Iowa Acts, House File 599.

ARC 2795B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8, 508.36 and 508.37, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 42, “Gender-Blended Minimum Nonforfeiture Standards for Life Insurance,” Chapter 44, “Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits,” and Chapter 47, “Valuation of Life Insurance Policies,” and to adopt new Chapter 91, “2001 CSO Mortality Table,” Iowa Administrative Code.

These amendments to the Division's rules are necessary to recognize, permit and prescribe the use of the 2001 CSO Mortality Table in determining the minimum reserve liabilities and nonforfeiture benefits. Iowa Code sections 508.36 and 508.37 authorize the Commissioner to adopt any mortality table adopted by the National Association of Insurance Commissioners. The National Association of Insurance Commissioners adopted the table in December 2002. The table reflects increases in life expectancy since the adoption of the 1980 CSO Mortality Table.

Insurers may use the 2001 CSO Mortality Table only for new policies issued after January 1, 2004. Beginning January 1, 2009, insurers will be required to use the table for their insurance products issued after that date.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on October 21, 2003. The Division is located at 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who intends to attend the public hearing and requires special accommodations should contact the Division at (515)281-5705.

INSURANCE DIVISION[191](cont'd)

Any interested person may make written comments on the proposed amendments on or before 12 noon on October 21, 2003. Written comments may be sent to Kim Cross at the address listed above. Comments may also be submitted electronically to kim.cross@iid.state.ia.us.

These amendments are intended to implement Iowa Code sections 508.36 and 508.37.

The following amendments are proposed.

ITEM 1. Adopt **new** rule 191—42.6(508) as follows:

191—42.6(508) 2001 CSO Mortality Table. The 2001 CSO Mortality Table shall be used for purposes of this chapter pursuant to the requirements of 191—Chapter 91.

ITEM 2. Adopt **new** rule 191—44.6(508) as follows:

191—44.6(508) 2001 CSO Mortality Table. The 2001 CSO Mortality Table shall be used for purposes of this chapter pursuant to the requirements of 191—Chapter 91.

ITEM 3. Adopt **new** rule 191—47.7(508) as follows:

191—47.7(508) 2001 CSO Mortality Table. The 2001 CSO Mortality Table shall be used for purposes of this chapter pursuant to the requirements of 191—Chapter 91.

ITEM 4. Adopt **new** 191—Chapter 91 as follows:

CHAPTER 91

2001 CSO MORTALITY TABLE

191—91.1(508) Purpose. The purpose of this chapter is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Iowa Code sections 508.36(3)“a”(3)“c” and 508.37(6)“h”(6) and 191—Chapter 47.

191—91.2(508) Definitions. For purposes of this chapter, the following definitions shall apply:

“2001 CSO Mortality Table” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the “2001 CSO Mortality Table” includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

“2001 CSO Mortality Table (F)” means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

“2001 CSO Mortality Table (M)” means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

“Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

“Smoker and nonsmoker mortality tables” means mortality tables with separate rates of mortality for smokers and nonsmokers.

191—91.3(508) 2001 CSO Mortality Table.

91.3(1) At the election of the company for any one or more specified plans of insurance and subject to the condi-

tions stated in this chapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004, and before the date specified in subrule 91.3(2) and to which Iowa Code sections 508.36(3)“a”(3)“c” and 508.37(6)“h”(6) and 191—Chapter 47 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

91.3(2) Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Iowa Code sections 508.36(3)“a”(3)“c” and 508.37(6)“h”(6) are applicable.

191—91.4(508) Conditions.

91.4(1) For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use:

a. Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

b. Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Iowa Code section 508.36(10), and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

c. Smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

91.4(2) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

91.4(3) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of rule 91.5(508) relative to use of the select and ultimate form.

91.4(4) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in 191—subrule 5.34(6). The commissioner may exempt a company from this requirement if it does business only in this state and no other state.

191—91.5(508) Applicability of the 2001 CSO Mortality Table to 191—Chapter 47, Valuation of Life Insurance Policies.

91.5(1) The 2001 CSO Mortality Table may be used in the application of 191—Chapter 47 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in rule 91.3(508):

a. Subparagraph 47.2(1)“b”(2): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

b. Rule 47.3(508) relating to the definition of “contract segmentation method”: All calculations are made using the 2001 CSO mortality rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in 91.5(1)“d.” The value of “qx+k+t-1” is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

INSURANCE DIVISION[191](cont'd)

c. Subrule 47.4(1): The 2001 CSO Mortality Table is the minimum standard for basic reserves.

d. Subrule 47.4(2): The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in subparagraphs 47.4(2)“c”(1) to (9). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant actuarial standards of practice.

e. Subrule 47.5(3): The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

f. Paragraph 47.5(5)“d”: The calculations specified in subrule 47.5(5) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

g. Paragraph 47.5(6)“d”: The calculations specified in subrule 47.5(6) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

h. Paragraph 47.5(7)“b”: The calculations specified in subrule 47.5(7) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

i. Subparagraph 47.6(1)“a”(2): The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

91.5(2) Nothing in this rule shall be construed to expand the applicability of 191—Chapter 47 to include life insurance policies exempted under 191—subrule 47.2(1).

191—91.6(508) Gender-blended table.

91.6(1) For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subrule.

91.6(2) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002.

91.6(3) It shall not, in and of itself, be a violation of Iowa Code chapter 507B for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

191—91.7(508) Separability. If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

These rules are intended to implement Iowa Code sections 508.36 and 508.37.

ARC 2827B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17) and 2003 Iowa Acts, Senate File 458, section 101, the Iowa Finance Authority hereby gives Notice of Intended Action to adopt Chapter 19, “State Housing Trust Fund,” Iowa Administrative Code.

This amendment proposes a new chapter concerning the state housing trust fund held and operated by the Authority. Through the state housing trust fund, the Authority seeks to further its mission with respect to affordable housing. The rules outline the application procedure, program guidelines, and other necessary requirements of the state housing trust fund. The rules adopt a trust fund allocation plan, which plan is incorporated by reference in rule 265—19.1(16).

The trust fund allocation plan sets forth the purpose of the state housing trust fund program, the administrative information required for participation in the program, the threshold criteria, the selection criteria and other applicable requirements. Copies of the trust fund allocation plan are available upon request from the Authority and are available electronically on the Authority’s Web site. The address for the Authority’s Web site is www.ifahome.com. It is the Authority’s intent to incorporate the 2004 trust fund allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

These rules do not contain a waiver provision, as the Authority does not intend to grant waivers under this program, other than as may be allowed pursuant to Chapter 18 of the Authority’s rules.

The Authority will receive written comments on the proposed plan until 4 p.m. on October 21, 2003. Comments may be addressed to Donna Davis, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Comments may be faxed to Donna Davis at (515)242-4957 or E-mailed to donna.davis@ifa.state.ia.us. Persons who wish to comment orally should contact Donna Davis at (515) 242-4990.

The Authority will hold a public hearing on October 21, 2003, to receive public comments on the plan. The public hearing will be held over the Iowa Communications Network (ICN) from 1:30 to 3:30 p.m. with the originating site at the Iowa Department of Economic Development, Main Conference Room, 2nd Floor, 200 East Grand Avenue, Des Moines, Iowa.

The following are the ten remote ICN sites where members of the public may attend the public hearing and make comments on the plan:

Fort Dodge
St. Edmond High School
501 N. 22nd Street
Fort Dodge, IA 50501
(515)955-5850
Room Location: Room 101

Dubuque
Carnegie-Stout Public Library
360 West 11th Street
Dubuque, IA 52001
(563)589-4217
Room Location: Report to Reference Desk for directions.

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Cedar Rapids
Grant Wood Area Education
Agency 10
4401 6th Street SW
Cedar Rapids, IA 52404
(319)399-6700
Room Location: Revere Room

Council Bluffs
Iowa Western Comm. College-3
2700 College Road
Council Bluffs, IA 51502
(712)325-3200
Room Location: Continuing Ed.
Bldg. Room #3

Creston
Southwestern Comm. College-1
1501 West Townline Road
Creston, IA 50801
Room Location: Room 211

Davenport
Kimberly Center
1002 W. Kimberly
Davenport, IA 52806
(563)386-5840
Room Location: Not specified

Mason City
Newman Catholic High School
2445 19th SW
Mason City, IA 50401
(641)423-6939
Room Location: Not specified

Ottumwa
Indian Hills Comm. College-8
651 Indian Hills Drive
Ottumwa, IA 52501
(641)683-5228
Room Location: Video-
conferencing & Training Center

Sioux City
Western Iowa Tech Comm.
College-2
4647 Stone Avenue
Sioux City, IA 51106
Room Location: Building A,
Room 921

Waterloo
Hawkeye Comm. College-2
1501 E. Orange Road
Waterloo, IA 50704
(319)296-2320
Room Location: Tama Hall

The Authority anticipates that it may make changes to the 2004 trust fund allocation plan based on comments received from the public.

These rules are intended to implement Iowa Code section 16.5(17) and 2003 Iowa Acts, Senate File 458, section 101.

The following amendment is proposed.

Adopt the following **new** chapter:

CHAPTER 19 STATE HOUSING TRUST FUND

265—19.1(16) Trust fund allocation plan. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund 2004 Allocation Plan effective December 31, 2003, shall be the qualified allocation plan for the distribution of funds held within the state housing trust fund established in 2003 Iowa Acts, Senate File 458, section 101. The trust fund allocation plan includes the plan, application and application instructions. The trust fund allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—19.2(16) Location of copies of the plan. The trust fund allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the trust fund allocation plan, application, and all related attachments and exhibits, if any, shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference 2003 Iowa Acts, Senate File 458, section 101.

These rules are intended to implement Iowa Code section 16.5(17) and 2003 Iowa Acts, Senate File 458, section 101.

ARC 2831B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 71, “Administration,” Chapter 72, “New Installations,” Chapter 73, “Existing Facilities,” Chapter 75, “Fees,” and Chapter 76, “Permits,” Iowa Administrative Code.

The proposed amendments update the rules; adopt the version of the building code used by the office of the Fire Marshal; make technical and editorial corrections; eliminate inspection quotas for state inspections; specify what information should be contained in accident reports; amend numerous provisions relating to special inspectors; clarify safety standards for new installations; clarify legislative intent for regulation of material lift elevators; increase some fees and establish at least one new fee; amend requirements for posting notices and permits near facilities; and allow the Labor Commissioner to post a notice that a facility is not to be used.

The purposes of these amendments are to make changes identified during the rules assessment mandated by Executive Order Number 8; provide the Labor Commissioner more flexibility in scheduling inspections due to reduced staffing level; update technical requirements; protect the safety of the public; implement legislative intent; provide for orderly renewal and revocation of special inspector commissions; and increase fees in order to approximately equal the projected costs of the program as required by Iowa Code section 89A.3.

A public hearing will be held on October 21, 2003, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than October 21, 2003, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

These amendments will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities that contract with political subdivisions to provide services.

These amendments are intended to implement Iowa Code section 89A.3.

The following amendments are proposed.

ITEM 1. Amend rule 875—71.1(89A) as follows:

Amend the introductory paragraph as follows:

875—71.1(89A) Definitions. The definitions contained in this rule shall apply to 875—Chapters 71, 72, 73, 75, 76 and 77, and in all safety standards adopted by reference, except as otherwise expressly provided and used in these chapters.

LABOR SERVICES DIVISION[875](cont'd)

Adopt the following **new** definitions in alphabetical order: "Building code." The applicable building code adopted by the city or county in which the facility is located. If no building code has been adopted, it shall be the code adopted in 661—Chapter 16.

"Recognized elevator company." An elevator company whose agent has successfully passed the required examination issued by the commissioner.

ITEM 2. Amend subrule 71.2(1) as follows:

Amend the introductory paragraph and unnumbered paragraph as follows:

71.2(1) Inspections may be made when the commissioner reasonably believes that a facility is not in compliance with the provisions of the rules. Accidents or complaints may result in inspections.

Privately inspected facilities shall be inspected annually. Facility inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines annual inspections of state-inspected facilities are not feasible due to resources, the labor commissioner shall determine the inspection schedule.

~~Inspections on existing facilities and all facilities installed hereafter will be conducted annually as resources permit within the following parameters:~~

Rescind paragraphs "a" through "d."

ITEM 3. Amend **71.2(2) "c"** as follows:

Amend the introductory paragraph as follows:

c. Safety tests shall be performed by a qualified person who is employed by a recognized elevator company or persons certified by the commissioner for the purpose of performing safety tests on their own facilities. All tests shall be in accordance with ASME A17.1 1999 (2000 through the 2002 addenda), part X, (except for rules 1000.1, 1000.1a, 1000.1b, and all of rule 1001 rule 8.11.1.1), and A18.1, part 10, (1999 with 2001 addenda) (except for rule 10.3.2). Safety test forms shall be in a format approved by the commissioner. The firm or person conducting the tests shall:

Add the following **new** subparagraph:

(4) On wheelchair lifts, attach to the disconnect a tag marked to show the date of the test and the name of the firm or person conducting the test.

ITEM 4. Amend subrule 71.2(4) as follows:

71.2(4) If the facility does not comply with the applicable rules upon completion of the inspection, the elevator inspector shall set the time for corrections to be made. The owner may petition the commissioner for additional time to make the necessary corrections. *If continued operation of a facility pending completion of repairs creates an imminent danger, the labor commissioner may post notice on the facility that it is not to be used pending repairs. Use of a facility contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18.*

ITEM 5. Amend subrule 71.2(5) as follows:

71.2(5) After all major alterations, the facility shall be inspected *by the commissioner's designee*. If alterations ~~are~~ such as to change the classification of the facility, an application for a new operating permit shall be submitted.

ITEM 6. Amend subrule 71.2(6) as follows:

71.2(6) All dormant facilities shall be inspected and meet requirements of 875—Chapter 72 *as a new installation* be-

fore being placed in service, and conform to *applicable sections of ASME A17.1, rule 1000.3 or A18.*

ITEM 7. Amend rule 875—71.3(89A) as follows:

875—71.3(89A) Accident reports. The owner or duly authorized agent shall immediately notify the commissioner of each and every personal injury accident requiring the service of a physician or *causing* disability exceeding one day or *causing* damage to the facility exceeding \$2,000 ~~to the facility~~. *Notification shall be in writing, and shall specifically identify the facility, state identification number, owner, and description of accident.* When an accident involves the failure or destruction of any part of the ~~construction facility~~ or the operating mechanism of a device, the use of the device is forbidden until it has been made safe and until it has been reinspected and any repairs or alterations have been approved by the commissioner. The removal of any part of the damaged ~~construction facility~~ or ~~operated~~ operating mechanism from the premises is forbidden until permission to do so has been granted by the commissioner.

ITEM 8. Amend subrule 71.5(2) as follows:

71.5(2) Examination. Each applicant shall satisfactorily pass ~~any one of the following examinations: the National Association of Elevator Safety Authorities examination.~~

a. ~~National Association of Professional Elevator Inspectors.~~

b. ~~National Association of Elevator Authorities.~~

c. ~~International Elevator Board, Inc.~~

Proof of passage will be satisfied by submission of the examination card by ~~any one of the above organizations~~ *organization*. Additionally, each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures and policies including Iowa Code chapter 89A, 875—Chapters 71 to 77, and ~~the ASME A17.1 codes~~ *all safety standards adopted by reference.*

ITEM 9. Amend paragraph **71.5(3) "a"** as follows:

a. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any acts or omissions on the part of the applicant. The insurance policy shall be in an amount of not less than ~~\$500,000 \$1,000,000~~ for bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in an amount of not less than ~~\$1,000,000 \$5,000,000~~ for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than ~~\$50,000 \$100,000~~ for damage to or destruction of property in any one accident.

ITEM 10. Amend rule 875—71.5(89A) by renumbering subrules **71.5(4)** to **71.5(6)** as subrules **71.5(5)** to **71.5(7)** and adopting the following **new** subrule 71.5(4):

71.5(4) Renewal of license. Special inspector licenses shall expire one year from the date of issuance. For each renewal, the special inspector must satisfy the same requirements as a new applicant as described in these rules.

ITEM 11. Amend rule 875—71.5(89A) by adopting the following **new** subrule:

71.5(8) Suspension and revocation. The labor commissioner may suspend or revoke any special inspector license for failure of the licensee to comply with any provision of these rules or Iowa Code chapter 89A or upon receipt of a certificate of noncompliance pursuant to Iowa Code chapter 252J or 261.

ITEM 12. Amend 875—Chapter 71 by adding the following **new** rule:

LABOR SERVICES DIVISION[875](cont'd)

875—71.7(89A) Other elevator regulations. Other regulations concerning elevators are found at 661—Chapter 16. Nothing in 875—Chapters 71 through 77 shall be viewed as providing an exemption, waiver, or variance from any otherwise applicable regulation or statute.

ITEM 13. Amend rule 875—72.1(89A), introductory paragraph, as follows:

875—72.1(89A) Purpose and scope. This chapter contains rules of safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of facilities. *No new or previously dormant facility may be installed except in accordance with the safety standards adopted by reference in this chapter.*

ITEM 14. Rescind subrule 72.1(1) and adopt the following **new** subrule in lieu thereof:

72.1(1) Installations—January 1, 1975, to December 31, 1982. As used in this chapter, ANSI A17.1 shall mean ANSI A17.1 (1971). As used in this chapter, ANSI C1 shall mean ANSI C1-1975.

ITEM 15. Rescind subrule 72.1(2) and adopt the following **new** subrule in lieu thereof:

72.1(2) Installations—January 1, 1983, to December 31, 1992. As used in this chapter, ANSI A17.1 shall mean ANSI A17.1 (1981). As used in this chapter, ANSI C1 shall mean ANSI C1-1981. As used in this chapter, ANSI A117.1 shall mean ANSI A117.1 (1980).

ITEM 16. Rescind subrule 72.1(3) and adopt the following **new** subrule in lieu thereof:

72.1(3) Installations—January 1, 1993, to December 31, 2000. As used in this chapter, ASME A17.1 shall mean ASME A17.1 (1990). As used in this chapter, ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990). As used in this chapter, ANSI A117.1 shall mean ANSI A117.1 (1980).

ITEM 17. Rescind subrule 72.1(4) and adopt the following **new** subrule in lieu thereof:

72.1(4) Installations—January 1, 2001, to December 31, 2003. As used in this chapter, ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda). As used in this chapter, ASME A18.1 shall mean ASME A18.1 (1999), except chapters 4, 5, 6, and 7. As used in this chapter, ANSI A117.1 shall mean ANSI A117.1 (1998). As used in this chapter, ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

ITEM 18. Renumber subrule **72.1(5)** as **72.1(6)** and adopt the following **new** subrule 72.1(5):

72.1(5) Installations—January 1, 2004, to present. As used in this chapter, ASME A17.1 shall mean ASME A17.1 (2003). As used in this chapter, ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except chapters 4, 5, 6, and 7. As used in this chapter, ANSI A117.1 shall mean ANSI A117.1 (1998). As used in this chapter, ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

ITEM 19. Amend renumbered subrule 72.1(6) as follows:

72.1(6) Any installation which is in compliance with the latest supplements to ASME A17.1 shall be considered to be in compliance with this chapter, *where the latest supplement has equal or more stringent safety requirements as determined by the commissioner.* As used in this rule, the word “installed” refers to the date of written contractual agreement to install a new facility or reinstate a dormant facility.

ITEM 20. Amend rule 875—72.2(89A) as follows:

875—72.2(89A) Definitions. The definitions contained in section 3 of the introduction and subsequent interpretations of Part 1 of ASME A17.1, and ANSI/NFPA 70, article 100 Part 1 of ASME A18.1, and Chapter 1 of ANSI A117.1, and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A and these rules.

ITEM 21. Rescind rule **875—72.4(89A)** and renumber rule **875—72.3(89A)** as **875—72.4(89A)**.

ITEM 22. Amend renumbered rule 875—72.4(89A) as follows:

875—72.4(89A) Hoistways, hoistway enclosures and related construction for electric elevators. The provisions contained in ASME A17.1, part I 2, are adopted by reference.

ITEM 23. Amend rule 875—72.5(89A) as follows:

875—72.5(89A) Hydraulic elevators. The provisions contained in ASME A17.1, part III 3, are adopted by reference. On hydraulic elevator installations, a scavenger pump or other acceptable means shall be provided, designed to carry excess oil from the cylinder packing gland back to the oil storage tank of the elevator *shall be provided*.

ITEM 24. Amend rule 875—72.6(89A) as follows:

875—72.6(89A) Power sidewalk elevators. The provisions contained in ASME A17.1, part IV section 5.5, are adopted by reference.

ITEM 25. Amend rule 875—72.8(89A) as follows:

875—72.8(89A) Hand and power dumbwaiters. The provisions contained in ASME A17.1, part VII sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

ITEM 26. Amend rule 875—72.9(89A) as follows:

875—72.9(89A) Escalators and moving walks. The provisions contained in ASME A17.1, part VIII 6, are adopted by reference.

ITEM 27. Rescind rule 875—72.10(89A) and adopt the following **new** rule in lieu thereof:

875—72.10(89A) General requirements. The provisions contained in ASME A17.1, part 8, are adopted by reference unless specifically excluded herein.

ITEM 28. Amend rule 875—72.11(89A) as follows:

875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks. The provisions contained in ASME A17.1, part X sections 8.10 and 8.11, except rules 1000.1, 1000.1a, 1000.1b, and all of rule 1001 section 8.11.1.1, are adopted by reference.

ITEM 29. Rescind and reserve rules **875—72.12(89A)** to **875—72.14(89A)**.

ITEM 30. Amend rule 875—72.15(89A) as follows:

875—72.15(89A) Power-operated special purpose elevators. The provisions contained in ASME A17.1, part XV section 5.7, are adopted by reference.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 31. Renumber rule 875—72.18(89A) as 875—72.3(89A) and amend as follows:

875—72.3(89A) Accommodating the physically disabled. All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically disabled. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, which are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 4.10.1-4.10.14 407 and 408.

ITEM 32. Amend rule 875—72.19(89A) as follows:

875—72.19(89A) Limited-use/limited-application elevators. The provisions contained in ASME A17.1, ~~part XXV~~ section 5.2, are adopted by reference.

ITEM 33. Amend rule 875—72.20(89A) as follows:

875—72.20(89A) Rack and pinion, screw-column elevators. The provisions contained in ASME A17.1, ~~part XVI~~ sections 4.1 and 4.2, are adopted by reference.

ITEM 34. Amend rule 875—72.21(89A) as follows:

875—72.21(89A) Inclined elevators. The provisions contained in ASME A17.1, ~~part XVII~~ section 5.1, are adopted by reference.

ITEM 35. Rescind rule 875—72.22(89A) and adopt the following **new** rule in lieu thereof:

875—72.22(89A) Material lift elevators. Material lifts existing at a location prior to January 1, 1975, are not regulated or inspected by the labor commissioner.

ITEM 36. Amend rule 875—72.23(89A) as follows:

875—72.23(89A) Elevators used for construction. The provisions contained in ASME A17.1, ~~part XIX~~ section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

ITEM 37. Amend rule 875—73.1(89A) as follows:

875—73.1(89A) Purpose and scope. This chapter establishes minimum safety standards for all existing elevators, dumbwaiters, escalators, moving walks and inclined and vertical wheelchair lifts (facilities not covered by 875—Chapter 72). This chapter shall apply to all facilities installed prior to January 1, 1975, unless specifically stated otherwise.

73.1(1) All existing facilities installed after December 31, 1974, shall conform with the safety standards (ASME) applicable at the time of installation.

73.1(2) Any facility which is in compliance with the latest applicable supplements to ASME A17.1, ASME A18.1, ANSI A117.1 or 875—Chapter 72 shall be considered to be in compliance with this chapter if the latest supplement requires safety standards at least equal to or more stringent than the standards adopted at the time of installation, as determined by the labor commissioner.

ITEM 38. Amend subrule 73.7(5) as follows:

73.7(5) No elevator shall be provided with a switch or device which makes more than one door or gate switch inoperative at any one time. EXCEPTION: Firefighter service switches and operation in leveling or truck zones.

ITEM 39. Amend subrule 73.8(1) as follows:

73.8(1) All maintenance, repair, and alterations shall comply with ASME A17.1 (1999 2003) code, ~~part XII~~.

ITEM 40. Amend rule 875—75.1(89A) as follows:

875—75.1(89A) New installations.

75.1(1) Installation inspection and permit fee fees for elevators, escalators, and moving walks shall be as follows: up to and including \$40,000 of valuation—\$130; over \$40,000 of valuation—\$130 plus \$1 for each \$1,000 or fraction thereof over \$40,000 of valuation. ~~This fee includes~~ These fees include initial inspection and first-year operating permit. ~~The fee for each installation consultative inspection is \$100.~~ Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200. If the facility does not comply at the time of the acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$400 200 for each additional inspection. The installation inspection and permit fee fees shall be remitted to the division of labor services when the application is filed.

75.1(2) Installation inspection and permit fee fees for dumbwaiters and inclined or vertical wheelchair lifts shall be as follows: up to and including \$30,000 of valuation—\$90; over \$30,000 of valuation—\$90 plus \$1 for each \$1,000 or any fraction thereof over \$30,000 of valuation. ~~This fee includes~~ These fees include initial inspection and first-year permit. ~~The fee for each installation consultative inspection is \$60.~~ Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200. If the facility does not comply at the time of the acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$60 200 for each additional inspection. The installation inspection and permit fee fees shall be remitted to the division of labor services when the application is filed.

75.1(3) The cost of reviewing sectional plans or prints once is included in the above fees. Print revisions submitted to the division shall be subject to an additional fee of \$50.

ITEM 41. Amend rule 875—75.2(89A) as follows:

875—75.2(89A) Alterations. Alteration inspection and permit fee fees shall be as follows: up to and including \$20,000 of valuation—\$90; over \$20,000 of valuation—\$90 plus \$1 for each \$1,000 or fraction thereof over \$20,000 of valuation. ~~This fee includes~~ These fees include initial inspection and the alteration permit fee fees. ~~The fee for each consultative inspection is \$60.~~ Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200. If the alteration does not comply at the time of an acceptance inspection and has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee of \$60 200 for each additional inspection. The alteration inspection and permit fee fees shall be remitted to the division of labor services when the application is filed.

ITEM 42. Amend rule 875—75.3(89A) as follows:

875—75.3(89A) Periodic (annual) inspections.

75.3(1) The periodic (annual) inspection fee for elevators, escalators, moving walks, or dumbwaiters and inclined or vertical wheelchair lifts shall be as follows: for each elevator, escalator, and moving walk—\$50 plus \$2 for every elevator landing; for each dumbwaiter—\$35; for each hand-powered elevator—\$40; for each inclined or vertical wheel-

LABOR SERVICES DIVISION[875](cont'd)

chair lift—\$40. This fee includes only the inspection. If the installation has to be reinspected through no fault of the division of labor services, there shall be a reinspection fee as follows: for each elevator, escalator, and moving walk—\$50; for each dumbwaiter—\$35; for each hand-powered elevator and handicapped restricted-use elevator—\$40; for each inclined or vertical wheelchair lift—\$40 of \$200. Each elevator, escalator, and moving walk consultative inspection fee is \$50. Each inclined or vertical wheelchair lift consultative inspection fee is \$40. *Consultative inspections may be performed at the discretion of the labor commissioner for a fee of \$100 per hour, including travel time, with a minimum charge of \$200.* Fees shall be remitted to the division of labor services within 30 days of the date inspected of inspection.

75.3(2) No change.

ITEM 43. Amend rule 875—75.6(89A) as follows:

875—75.6(89A) Extension of time for permit. The extension of time fee for construction (temporary operating) permit shall be as follows: for each facility—\$25 50.

ITEM 44. Amend rule 875—75.7(89A) as follows:

875—75.7(89A) Special inspector license. The special inspector license biennial annual fee shall be \$30. The fee must be paid for each renewal.

ITEM 45. Amend rule 875—75.8(89A) as follows:

875—75.8(89A) Safety test certification for own facility. The annual certification fee for performing safety tests on own or employer's facility shall be \$45 25. The certification fee must be paid for each renewal.

ITEM 46. Amend rule 875—76.1(89A) as follows:

875—76.1(89A) Owner's responsibility. The procuring of new installation, major alteration permits, operating permits, and the payment of all fees shall be the responsibility of the owner. No installation or alteration shall begin until approved and the permit has been issued. *Failure to obtain the appropriate permit prior to installation or alteration may, at the discretion of the labor commissioner, result in the automatic assessment of a reinspection fee under 875—subrule 75.1(1) and a referral to the attorney general for prosecution of criminal penalties described in Iowa Code section 89A.17.*

ITEM 47. Amend rule 875—76.3(89A) as follows:

875—76.3(89A) Alteration permit—Drawings drawings and specifications. When application is made for an alteration permit, drawings and specifications of all changes to be made shall be submitted.

ITEM 48. Amend rule 875—76.4(89A) as follows:

875—76.4(89A) Placement of operating permits—display of state identification number.

76.4(1) All Current operating permits shall be displayed in the elevator car enclosure enclosures. Where the permit has been subjected to repeated defacing or vandalism, it may be filed at the establishment and be made available upon request. *Notice that the operating permits are available for review and of where the operating permits are located must be posted in the elevator.*

76.4(2) Escalator, and moving walk, and wheelchair lift operating permits shall be displayed on or near the unit for which they are issued.

76.4(3) Operating permits for dumbwaiters shall be displayed on the hoistway adjacent to the main floor door.

76.4(4) *The state identification number of each facility shall be conspicuously displayed on or near the facility and adjacent to a telephone number for the reporting of accidents to the owner of the facility.*

ITEM 49. Amend rule 875—76.5(89A) as follows:

875—76.5(89A) Posting of installation or major alteration permit.

76.5(1) All installation or major alteration permits shall be kept at the worksite and be made available upon request.

76.5(2) ~~Reserved.~~ *The alteration permit shall expire upon completion of alteration as described in the permit application.*

ITEM 50. Adopt **new** subrule 76.6(7) as follows:

76.6(7) Failure to comply with these provisions may result in the revocation of the construction permit.

ITEM 51. Amend rule 875—76.7(89A) as follows:

875—76.7(89A) Alterations. When any combination of alterations or changes is made constituting more than 50 percent of the elevator or hoistway construction as determined by the commissioner, the entire facility shall be brought into compliance with ASME A17.1 (1999 2000 through the 2002 addenda) and shall be deemed a new facility.

ARC 2819B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, “State Parks and Recreation Areas,” Iowa Administrative Code.

These amendments accomplish the following:

1. Increase the fee for day use lodge rental at Lake Keomah State Park.
2. Add a reduced day use rental fee for all lodges rented Monday through Thursday.
3. Increase the fee for group camp dining hall rental at Lake Keomah State Park and establish a new day use only dining hall rental fee.
4. Clarify current language regarding day use only classroom and library rental fees at the conservation education center.
5. Add a day use attendance fee for day use groups/ persons who utilize the entire conservation education facility and staff. This fee was inadvertently left out of the last rule making.
6. Establish opening and closing times for beach access at Brushy Creek State Recreation Area.
7. Add Elk Rock State Park, Marion County, to the after-hours fishing list.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 21, 2003. Such written materials should be directed to the

NATURAL RESOURCE COMMISSION[571](cont'd)

State Parks Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-8674 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 21, 2003, at 1:30 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 461A.3, 461A.44, 461A.46, 461A.47 and 461A.57.

The following amendments are proposed.

ITEM 1. Amend subrule **61.4(1)**, paragraph “c,” as follows:

c. Lodge rental per reservation. This fee does not include tax. Tax will be calculated at time of payment.

	<i>Per Weekday M-Th***</i>	<i>Per Weekend Day Fr-Su</i>
A. A. Call State Park, Kossuth County	\$ 40	\$ 80
Backbone State Park Auditorium, Delaware County**	25	50
Backbone State Park, Delaware County	62.50	125
Beed's Lake State Park, Franklin County	40	80
Bellevue State Park, Jackson County	50	100
Clear Lake State Park, Cerro Gordo County	50	100
Dolliver Memorial State Park-Central Lodge, Webster County**	30	60
Dolliver Memorial State Park-South Lodge, Webster County	37.50	75
Ft. Defiance State Park, Emmet County	35	70
George Wyth State Park, Black Hawk County**	35	70
Gull Point State Park, Dickinson County	100	200
Lacey-Keosauqua State Park, Van Buren County	35	70
Lake Ahquabi State Park, Warren County	45	90
Lake Keomah State Park, Mahaska County	45	70 90
Lake Macbride State Park, Johnson County	35	70
Lake of Three Fires State Park, Taylor County	35	70
Lake Wapello State Park, Davis County	30	60
Lewis and Clark State Park, Monona County	35	70
Palisades-Kepler State Park, Linn County	87.50	175
Pine Lake State Park, Hardin County	40	80
Pleasant Creek Recreation Area, Linn County**	37.50	75
Stone State Park, Woodbury/Plymouth Counties	62.50	125
Viking Lake State Park, Montgomery County	30	60
Walnut Woods State Park, Polk County	100	200
Wapsipinicon State Park, Jones County		
Heated year-round lodge	35	70
Unheated seasonal lodge	20	40

**Does not contain kitchen facilities

***The weekend day fee applies to New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, even though the holiday may fall on a weekday.

ITEM 2. Amend subparagraph **61.4(1)“g”(2)** as follows:

(2) Lake Keomah State Park, Mahaska County. All groups—\$25 \$40 per day for the dining/restroom facility plus the applicable camping fee. *Lake Keomah dining/restroom facility day use only rental \$90.*

ITEM 3. Amend subparagraph **61.4(1)“h”(3)** as follows:

(3) Classroom. All day use groups ~~using the classroom or library~~ *not utilizing the entire conservation education center facilities* must pay the appropriate *classroom or library* fee. Overnight groups wishing to use the classroom facility for non-conservation education activities (such as quilters' meetings or family reunions) must pay the appropriate classroom fee.

ITEM 4. Amend paragraph **61.4(1)“h”** by adopting the following **new** subparagraph **(6)** and renumbering existing subparagraphs **(6)** to **(9)** as **(7)** to **(10)**:

(6) Day use attendance fee. A fee of \$5 per person per day plus applicable tax shall be charged to all day use groups and all persons associated with overnight groups attending day functions only when utilizing the entire conservation education center facilities and staff services.

ITEM 5. Amend rule 571—61.6(461A) by adopting the following **new** subrule 61.6(1) and renumbering existing subrules **61.6(1)** to **61.6(3)** as **61.6(2)** to **61.6(4)**:

61.6(1) Brushy Creek State Recreation Area, Webster County. Swimming is limited by the provisions of 61.5(2);

NATURAL RESOURCE COMMISSION[571](cont'd)

also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily.

ITEM 6. Amend rule 571—61.9(461A) by adopting the following **new** subrule 61.9(6) and renumbering existing subrules **61.9(6)** to **61.9(21)** as **61.9(7)** to **61.9(22)**:

61.9(6) Elk Rock State Park, Marion County. The Teeter Creek boat ramp area just east of State Highway 14, access to which is the first road to the left upon entering the park.

ARC 2829B

NURSING BOARD[655]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 2, “Nursing Education Programs,” Iowa Administrative Code.

This amendment eliminates the requirement to notify the Board of the rearrangement of the sequence of courses. The rule changes encourage the implementation of innovative curriculum changes and increase options for students. The rule changes also consolidate three sections of required Board reports into one section.

Any interested person may make written comments or suggestions on or before October 21, 2003. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

This amendment is intended to implement Iowa Code chapter 152.

The following amendment is proposed.

Rescind subrule 2.11(3) and adopt in lieu thereof the following **new** subrule:

2.11(3) Changes requiring board approval and notification. The program shall submit nine copies of a proposed change for board approval at least three weeks prior to the next scheduled board meeting when the outcome will:

- a. Lengthen or shorten the course of study.
- b. Add or delete academic credit in a course required for graduation.
- c. Add or delete a course required for graduation.
- d. Alter graduation requirements.
- e. Reduce the human, physical or learning resources provided by the controlling institution to meet program needs as described in rule 2.4(152).
- f. Substantively alter the philosophy/mission of the program.
- g. Revise the predominant method of instruction or delivery, including transition from on-site to self-study or distance learning.
- h. Entail delivery of a cooperative program of study with an institution that does not provide a degree in nursing.

ARC 2828B

NURSING BOARD[655]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, “Licensure to Practice—Registered Nurse/Licensed Practical Nurse,” Iowa Administrative Code.

This amendment establishes the ARNP registration fee as a set amount and eliminates the fee that changes based on length of the registration.

Any interested person may make written comments or suggestions on or before October 21, 2003. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

This amendment is intended to implement Iowa Code chapters 147 and 152.

The following amendment is proposed.

Amend rule **655—3.1(17A,147,152,272C)**, definition of “fees,” numbered paragraph **4**, to read as follows:

4. Application for registration as an advanced registered nurse practitioner, ~~\$27 81 per year, or any portion of a year for any length of registration up to three years.~~

ARC 2820B

PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 3, “Early Hearing Detection and Intervention,” Iowa Administrative Code.

The purpose of adopting Chapter 3 is to establish administrative rules relative to the universal hearing screening of all newborns and infants in Iowa. In addition, the rules facilitate the transfer of data to the Department to enhance the capacity of agencies and practitioners to provide services to children and their families. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the earliest possible opportunity to obtain early intervention services.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The Department acquired input from various disciplines in writing Chapter 3. Representatives of the Bureau of Family Health, the Center for Disabilities and Development, the Iowa Department of Human Services, the Iowa Hospital Association, Early ACCESS, area education agencies, the Iowa School for the Deaf, the Iowa Department of Human Rights, the Iowa Chapter of the American Academy of Pediatrics, private practice audiology, and parents were involved in the writing process.

Any interested person may make written or oral suggestions or comments on these proposed rules on or before October 21, 2003, at 12 noon. Comments should be directed to Denise Ramsey, Community Health Consultant, Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, Des Moines, Iowa 50319-0075; telephone (515)242-5639 or fax (515)242-6384.

A public hearing will be held over the Iowa Communications Network (ICN) on October 21, 2003, from 10 to 11 a.m. in the ICN Conference Room, 3rd Floor, Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa 50319. Additional ICN sites for the hearing are scheduled for the following locations:

Spirit Lake High School
2701 Hill Avenue

Spirit Lake

University of Northern Iowa
Schindler 130A

Corner of Hudson Road and 23rd Street
Cedar Falls

Iowa School for the Deaf
Careers Building, 2nd Floor
1600 South Highway 275
Council Bluffs

Ottumwa High School
Voc. Tech. Building, Room 157
501 E. 2nd
Ottumwa

Iowa City Community School District
Administration Office
509 S. Dubuque Street
Iowa City

Eastern Iowa Community College
Kahl Educational Center, Room 300
326 W. 3rd Street
Davenport

North Iowa Area Community College
500 College Drive
Room Number CB118
Mason City

Persons may present their views at the public hearing either orally or in writing. Persons desiring to make oral presentations at the hearing should contact Denise Ramsey at least one day prior to the date of the public hearing. A copy of written comments must be provided and received by 12 noon the day of the hearing. Written comments may be faxed to (515)242-6384.

These rules are intended to implement 2003 Iowa Acts, House File 454.

The following **new** chapter is proposed.

CHAPTER 3

EARLY HEARING DETECTION AND INTERVENTION

641—3.1(80GA,HF454) Definitions. For the purposes of this chapter, the following definitions will apply:

“Area education agency” or “AEA” means an intermediate educational unit created by Iowa Code chapter 273.

“Audiologist” means a person licensed pursuant to Iowa Code chapter 147 or certified by the Iowa board of educational examiners pursuant to 282—15.3(272) or a person appropriately licensed in the state where the person practices.

“Birth center” means “birth center” as defined in Iowa Code section 135.61.

“Birthing hospital” means a private or public hospital licensed pursuant to Iowa Code chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services.

“Department” means the Iowa department of public health.

“Diagnostic audiologic assessment” means physiologic or behavioral procedures completed by a licensed audiologist to evaluate and diagnose hearing loss.

“Discharge” means a release from a hospital to the parent or legal guardian of the child.

“Early ACCESS” means Iowa’s Individuals with Disabilities Education Act (IDEA), Part C, program for infants and toddlers. It is a statewide, comprehensive, interagency system of integrated early intervention services that supports eligible children and their families as defined in 281—Chapter 120.

“Guardian” means a person who is not the parent of a minor child, but who has legal authority to make decisions regarding life or program issues for the child. A guardian may be a court or a juvenile court. “Guardian” does not mean conservator, as defined in Iowa Code section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

“Hearing loss” means a permanent unilateral or bilateral hearing loss of greater than 30 dB HL in the frequency region important for speech recognition (500-4000 Hz).

“Hearing screening” means a physiological measurement of hearing of a newborn or infant with a “pass” or “refer” result. Screening is used to determine the newborn’s or infant’s need for further testing and must be performed bilaterally, when applicable.

“Initial screening” means a newborn hearing screening performed during the birth admission for an infant born in a birthing hospital, or the first newborn hearing screening performed on a newborn born in a facility other than a hospital.

“Newborn hearing screening” means a physiological test to separate those newborns with normal hearing from those newborns who may have hearing thresholds of greater than 30 dB HL in either ear in the frequency region important for speech recognition (500-4000 Hz).

“Normal hearing” means hearing thresholds in both ears of 30 dB HL or less in the frequency region important for speech recognition (500-4000 Hz).

“Parent” means:

1. A biological or adoptive parent of a child;
2. A guardian, but not the state if the child is a ward of the state;
3. A person acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, or a person who is legally responsible for the child’s welfare;
4. A surrogate parent who has been assigned in accordance with 281—120.68(34CFR303); or
5. A foster parent, if:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- A biological parent's authority to make the decisions required of parents under state law has been terminated; and
- The foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of a parent; and has no interest that would conflict with the interests of the child.

"Physician" means an individual licensed under Iowa Code chapter 148, 150, or 150A.

"Rescreen" means a newborn hearing screening performed after two weeks of age on an infant who did not pass the initial screening.

641—3.2(80GA, HF454) Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with 2003 Iowa Acts, House File 454, relative to the following:

1. Universal hearing screening of all newborns and infants in Iowa.
2. Facilitating the transfer of data to the department to enhance the capacity of agencies and practitioners to provide services to children and their families.

641—3.3(80GA, HF454) Goal and outcomes. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the earliest possible opportunity to obtain early intervention services.

641—3.4(80GA, HF454) Screening the hearing of all newborns. Beginning January 1, 2004, all newborns and infants born in Iowa, except those born with a condition that is incompatible with life, shall be screened for hearing loss. The person required to perform the screening shall use at least one of the following procedures:

1. Automated or diagnostic auditory brainstem response, or
2. Evoked otoacoustic emissions.

641—3.5(80GA, HF454) Procedures required of birthing hospitals. Beginning January 1, 2004, each birthing hospital in Iowa shall follow these procedures:

3.5(1) Each birthing hospital shall designate an employee of the hospital to be responsible for the newborn hearing screening program in that institution.

3.5(2) Prior to the discharge of the newborn, each birthing hospital shall provide hearing screening to every newborn delivered in the hospital, except in the following circumstances:

- a. The newborn is transferred for acute care prior to completion of the hearing screening.
- b. The newborn is born with a condition that is incompatible with life.

3.5(3) If a newborn is transferred for acute care, the birthing hospital shall notify the receiving facility of the status of the hearing screening. The receiving facility shall then be responsible for completion of the newborn hearing screening prior to discharge of the newborn from the nursery.

3.5(4) Newborn hearing screening shall be performed by a licensed audiologist, audiology assistant, audiometrist, registered nurse, licensed physician, or other person for whom newborn hearing screening is within the person's scope of practice.

3.5(5) The hospital shall report newborn hearing screening results to the parent or guardian in written form.

3.5(6) The hospital shall report newborn hearing screening results to the department in a manner prescribed in 3.8(80GA, HF454).

641—3.6(80GA, HF454) Procedures required of birth centers. Beginning January 1, 2004, each birth center in Iowa shall follow these procedures:

3.6(1) Each birth center shall designate an employee of the birth center to be responsible for the newborn hearing screening program in that institution.

3.6(2) Prior to the discharge of the newborn, each birth center shall refer every newborn delivered in the birth center to a licensed audiologist, physician, or hospital for a newborn hearing screening. Before discharge of the newborn, the birth center shall arrange an appointment for the newborn hearing screening and report to the parent the appointment time, date, and location.

3.6(3) The facility to which the newborn is referred for screening shall complete the screening within 30 days of the newborn's discharge from the birth center, unless the parent fails to attend the appointment. If the parent fails to attend the appointment, the facility shall document such failure in the medical or educational record and shall report such failure to the department.

3.6(4) The person who completes the newborn hearing screening shall report screening results to the parent in written form.

3.6(5) The person who completes the newborn hearing screening shall report screening results to the department in the manner prescribed in 3.8(80GA, HF454).

641—3.7(80GA, HF454) Procedures to ensure that children born in locations other than a birth center or birthing hospital receive a hearing screening.

3.7(1) Beginning January 1, 2004, a physician or other health care professional who undertakes primary pediatric care of a newborn delivered in a location other than a birthing hospital or birth center shall refer the newborn to a licensed audiologist, physician, or hospital for completion of the newborn hearing screening within three months of the newborn's birth. The health care professional who undertakes primary pediatric care of the newborn shall arrange an appointment for the newborn hearing screening and report to the parent the appointment time, date, and location.

3.7(2) The person who completes the newborn hearing screening shall report screening results to the parent in written form.

3.7(3) The person who completes the newborn hearing screening shall report screening results to the department in the manner prescribed in 3.8(80GA, HF454).

641—3.8(80GA, HF454) Reporting hearing screening results and information to the department. Beginning January 1, 2004, any birthing hospital, birth center, physician, or other health care professional required to report information pursuant to 2003 Iowa Acts, House File 454, shall report all of the following information to the department relating to each newborn's hearing screening within six days of the birth of the newborn, utilizing the department's designated reporting system.

3.8(1) The name and date of birth of the newborn.

3.8(2) The name, address, and telephone number, if available, of the mother of the newborn. If the mother is not the person designated as legally responsible for the child's care, the name, address, and telephone number of the parent, as defined in 3.1(80GA, HF454), shall be reported.

3.8(3) The name of the primary care provider for the newborn at the birthing hospital or birth center.

3.8(4) The results of the newborn hearing screening, either "pass," "refer," or "not screened," for each ear separately.

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3.8(5) The results of any rescreening, either “pass” or “refer,” and the diagnostic audiologic assessment procedures used for each ear separately.

641—3.9(80GA,HF454) Conducting and reporting diagnostic audiologic assessments to the department. Beginning January 1, 2004, any facility conducting diagnostic audiologic assessments shall report the results of the assessments for any child under three years of age to the department. The facility shall conduct the assessment in accordance with the Pediatric Audiologic Diagnostic Protocol contained at Appendix A. Results shall be reported as follows.

3.9(1) Results shall be reported for each ear separately.

3.9(2) If an assessment results in a diagnosis of normal hearing for both ears, this shall be reported.

3.9(3) Any diagnosis of hearing loss shall also be reported except for transient conductive hearing loss lasting for less than 90 days in the professional judgment of the practitioner.

3.9(4) Reported results shall include a statement of the severity (mild, moderate, moderately severe, severe, or profound) and type (sensorineural, conductive, or mixed) of hearing loss.

641—3.10(80GA,HF454) Sharing of information and confidentiality. Reports, records, and other information collected by or provided to the department relating to a child's newborn hearing screening, rescreen, and diagnostic audiologic assessment are confidential records pursuant to Iowa Code section 22.7.

3.10(1) Personnel of the department shall maintain the confidentiality of all information and records used in the review and analysis of newborn hearing screenings, rescreens, and diagnostic audiologic assessments, including information which is confidential under Iowa Code chapter 22 or any other provisions of state law.

3.10(2) No individual or organization providing information to the department in accordance with this rule shall be deemed to be or held liable for divulging confidential information.

3.10(3) The department shall not release confidential information except to the following persons and entities under the following conditions:

- a. The parent or guardian of an infant or child for whom the report is made.
- b. A local birth-to-three coordinator with the Early ACCESS program or an agency under contract with the department to administer the children with special health care needs program.
- c. A local health care provider.
- d. A representative of a federal or state agency, to the extent that the information is necessary to perform a legally au-

thorized function of that agency. The information provided may not include the personal identifiers of an infant or child.

3.10(4) Research purposes. All proposals for research using the department's data to be conducted by persons other than program staff shall first be submitted to and accepted by the researchers' institutional review board. Proposals shall then be reviewed and approved by the department before research can commence.

641—3.11(80GA,HF454) Reporting requirements for AEAs. Beginning January 1, 2004, any AEA providing newborn hearing screening, rescreen, or diagnostic audiologic assessment to an infant shall report all of the following information relating to each infant's screening, rescreen or assessment to the department utilizing the department's designated reporting system.

3.11(1) The name and date of birth of the infant.

3.11(2) The name, address, and telephone number, if available, of the mother of the infant. If the mother is not the person designated as legally responsible for the child's care, the name, address, and telephone number of the parent, as defined in 3.1(80GA,HF454), shall be reported.

3.11(3) The name of the primary care provider for the infant.

3.11(4) The results of any newborn hearing screening performed at the AEA, either “pass” or “refer,” for each ear separately.

3.11(5) The results of any rescreening performed at the AEA, either “pass” or “refer,” for each ear separately.

3.11(6) The results of any diagnostic assessment performed at the AEA, for each ear separately.

641—3.12(80GA,HF454) Procedure to accommodate parental objection. These rules shall not apply if the parent objects to the hearing screening.

3.12(1) If a parent objects to the screening, the birthing hospital, birth center, physician, or other health care professional shall obtain a written refusal from the parent or guardian and shall maintain the original copy of the written refusal in the newborn's or infant's medical record.

3.12(2) The birthing hospital, birth center, physician, or other health care professional shall send a copy of the written refusal to the department within six days of the birth of the newborn.

641—3.13(80GA,HF454) Civil/criminal liability. A person who acts in good faith in complying with these rules shall not be held civilly or criminally liable for reporting the information required.

Appendix A

Pediatric Audiologic Diagnostic Protocol

The following protocol should be used to facilitate the diagnosis of hearing loss by three months of age and entry into early intervention for infants with hearing loss by six months of age. This diagnostic protocol should be implemented by an audiologist licensed by the Iowa board of speech pathology and audiology examiners.

Infants should be referred for a diagnostic evaluation after receiving a “refer” result from one or both ears on a newborn hearing screening and a hearing rescreen performed at two to six weeks of age. Timely referral for diagnostic auditory brainstem response (ABR) testing may negate the need for sedation for this test in very young infants. Infants who are identified at risk for late-onset hearing loss (JCIH, 2000) should receive audiologic monitoring and follow-up by age-appropriate test procedures at six-month intervals until the age of five years.

Audiologic diagnostic centers should be prepared to provide the following services:

I. Measures of auditory sensitivity

A. Auditory brainstem response (ABR)

Infants who do not pass the newborn hearing screening or rescreen should be evaluated with a click-evoked air-conduction ABR and at least one low-frequency tone burst ABR, preferably at 500 Hz. Response wave-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

forms should be measured at several levels to allow threshold determination and latency-intensity functions. When thresholds are determined to be elevated, the audiologist may measure the ABR with frequency-specific stimuli at other frequencies as well. Infants suspected of having significant conductive hearing loss should be considered for bone-conduction ABR testing. Clinicians should be aware that technological advances will continually improve recommended protocols.

B. Evoked otoacoustic emissions

Transient evoked otoacoustic emissions (TEOAE) or distortion product otoacoustic emissions (DPOAE) should be used to confirm the magnitude and configuration of the hearing loss as determined by the ABR.

C. Behavioral measures

At a developmental age of six months or older, it is possible to obtain reliable behavioral audiometric information using visual reinforcement audiometry (VRA). While this test has traditionally been performed in the sound field, ear-specific threshold information can be obtained using insert earphones. VRA is an important technique for use in monitoring auditory thresholds, especially during the first few years of hearing aid use.

II. Measures of middle ear function

A. Tympanometry

Although pass/fail criteria for tympanograms from infants younger than six months of age are currently being developed, an infant audiologic evaluation should include an admittance tympanogram at 1000 Hz to help determine middle ear function.

B. Acoustic reflexes

Ipsilateral or contralateral acoustic reflexes should be measured at a minimum of two activator frequencies (1000 and 2000 Hz) at a probe tone of 800 or 1000 Hz.

These rules are intended to implement 2003 Iowa Acts, House File 454.

ARC 2821B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, “General Provisions for Radiation Machines and Radioactive Materials,” Iowa Administrative Code.

The proposed changes are as follows:

Item 1 changes the fee from \$50 to \$100. After one year of administering the program, the Department finds that the current fee schedule is not sufficient to cover the costs.

Item 2 changes the words “hazardous material” to “radioactive material.” This change clarifies the content of shipments to be covered under subrule 38.8(11).

These rules are subject to waiver pursuant to the Department’s exemption provision contained at 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular amendments.

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on October 21, 2003. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4611; fax (515) 725-0318; or E-mail dflater@idph.state.ia.us.

A public hearing will be held on October 21, 2003, at 8:30 a.m. in the Conference Room, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department to advise of specific needs.

These amendments are intended to implement Iowa Code chapter 136C.

The following amendments are proposed.

ITEM 1. Amend subrule 38.8(11), paragraph “a,” subparagraph (3), as follows:

(3) \$50 \$100 for each shipment by truck or by rail paid by the shipper for low-level radioactive waste shipped in or across Iowa. The department may accept an annual shipment fee as negotiated with a shipper or accept payment per shipment. This fee applies to waste shipped to a site authorized by a government agency to receive low-level radioactive waste or shipped to a storage site to be held for future disposal.

ITEM 2. Amend subrule 38.8(11), paragraph “c,” as follows:

c. All fees received pursuant to this subrule shall be used for purposes related to transporting hazardous radioactive material, including enforcement and planning, developing, and maintaining a capability for emergency response.

ARC 2834B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable In-

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come,” and Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Iowa Administrative Code.

These amendments are proposed because of 2003 Iowa Acts, House File 674.

Item 1 amends rule 39.12(422) to include persons in the armed forces of the United States who were deployed outside the U.S. in certain contingency operations as persons who would be eligible for the tax benefits described in detail in the rule. The persons in the contingency operations would be eligible for the tax benefits at the time they left the operations to the extent that the time was on or after May 21, 2003.

Item 2 adds new rules 40.61(422) to 40.64(422) to Chapter 40. Rule 40.61(422) provides that active duty pay of national guard members and armed forces military reserve members for military service on or after January 1, 2003, is exempt from Iowa income tax to the extent the income is included in federal adjusted gross income and the military service is pursuant to orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. Rule 40.62(422) provides a deduction of up to \$1,500 for unreimbursed overnight transportation, meal and lodging expenses for travel away from the taxpayer's home of more than 100 miles to the extent the expenses were incurred for the performance of services on or after January 1, 2003, as a member of the national guard or armed forces military reserve. Rule 40.63(422) provides an Iowa income tax exclusion for income realized from repayment of military student loans by individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States to the extent the income was realized on or after January 1, 2003. Rule 40.64(422) describes the Iowa income tax exclusion of the death gratuity that was payable to an eligible survivor of a member of the armed forces including a member of a reserve component of the armed forces who died while on active duty after September 10, 2001. The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces immediately following a service member's death and before other survivor benefits, if any, become available.

Item 3 amends rule 41.5(422) by adding a new subrule that subtracts the deduction in rule 40.62(422) for unreimbursed travel expenses of national guard members or armed forces reserve members to the extent the deduction was included under miscellaneous itemized deductions of the taxpayer.

Item 4 amends subrule 52.1(6) by adding a new lettered paragraph. The paragraph provides that certain veterans' organizations are considered to be exempt from federal income tax if the organizations do not meet the requirement that 75 percent of the members need to be past or present armed forces members because the membership of the organization includes ancestors or lineal descendants.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities that contract with political subdivisions.

There are no waiver provisions reflected in these amendments because the Department lacks the statutory authority to grant waivers where rules are mainly an interpretation of statutes.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 3, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office

Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 24, 2003.

These amendments are intended to implement Iowa Code sections 422.7, 422.9, 422.21, and 422.34 as amended by 2003 Iowa Acts, House File 674.

The following amendments are proposed.

ITEM 1. Amend rule 701—39.12(422) as follows:

701—39.12(422) Tax benefits for persons in the armed forces serving in a combat zone or a qualified hazardous duty area or deployed outside the United States in a contingency operation. For tax years ending after August 2, 1990, a number of state tax benefits are authorized for persons in the armed forces who serve in an area designated by the President and Congress as a combat zone. Similar state tax benefits are also authorized for persons who serve in an area designated by the President and the Congress as a qualified hazardous duty area for tax years beginning on or after January 1, 1999. *In addition, uniform state tax benefits are authorized for persons in the armed forces of the United States who were deployed outside the United States in an operation designated by the Secretary of Defense as a contingency operation as defined in 10 U.S.C. § 101(a)(13), or which became a contingency operation by the operation of law. Persons who were deployed in a contingency operation who ceased to participate in such operation on or after May 21, 2003, are considered to be eligible individuals for purposes of being granted additional time to perform certain acts with the department to the extent the period for performing an act did not expire prior to May 21, 2003, or a later date if the person ceased to participate in the contingency operation on a date after May 21, 2003.* Those persons who were serving in support of the armed forces personnel in a combat zone or those persons who were serving in support of armed forces personnel in a qualified hazardous duty area are also eligible for the state tax benefits. The eligible individuals are given the same additional time period to file state income tax returns and perform other acts related to the department of revenue and finance as would constitute timely filing of returns or timely performance of other acts as described in Section 7508(a) of the Internal Revenue Code. “Other acts related to the department” includes filing claims for refund for any type of tax administered by the department, making tax payments other than withholding payments, filing appeals on tax matters, filing returns for taxes other than income tax, and performing other acts such as making timely contributions to individual retirement accounts. The additional time period for filing returns and performing other acts applies to the spouse of the person who was in the combat zone or the qualified hazardous area or the spouse of a person who was serving in support of persons in the combat zone or hazardous duty area to the extent the

REVENUE DEPARTMENT[701](cont'd)

spouse files jointly or separately on the combined return with the person who was in the combat zone or hazardous duty area, or when the spouse is a party with the person who was serving in support of persons in the combat zone or hazardous duty area to any tax matter with the department for which the additional time period is allowed. The additional time period for filing state returns and performing other acts is 180 days after the person leaves the combat zone, or the hazardous duty area *or ceases to participate in the contingency operation* which is the same time period as allowed in federal income tax law. However, a person who was hospitalized because of illness or injury in the combat zone or the hazardous duty area has up to five years to file returns or perform certain acts with this department after leaving the combat zone or hazardous duty area.

For tax years beginning on or after January 1, 1995, certain persons performing peacekeeping duties in a location designated by Congress as a qualified hazardous duty ~~zone~~ *area* or other individuals performing military duties overseas in support of the persons in the hazardous duty area are eligible for the tax benefits described above. See rule 39.14(422) for additional information on the Bosnia-Herzegovina hazardous duty area.

This rule is intended to implement Iowa Code sections 422.3 and 422.21 *as amended by 2003 Iowa Acts, House File 674*.

ITEM 2. Amend 701—Chapter 40 by adopting the following new rules:

701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, for service not covered by military orders for one of the three operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.62(422) Deduction of up to \$1,500 for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a mem-

ber of the national guard or armed forces military reserve. A taxpayer may subtract, in computing net income, the costs not reimbursed, not to exceed \$1,500, that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.63(422) Exclusion of income from military student loan repayments. Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty. An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

Note that the purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

ITEM 3. Amend rule 701—41.5(422) by adding the following new subrule and amending the implementation clause:

41.5(10) Subtraction of unreimbursed overnight travel expenses allowed under rule 701—40.62(422). Subtract to the extent the deduction allowed under rule 701—40.62(422) for unreimbursed overnight travel expenses was included in the miscellaneous itemized deductions of the taxpayer.

This rule is intended to implement Iowa Code section 422.9 as amended by ~~2001~~ 2003 Iowa Acts, ~~chapter 132~~ House File 674.

ITEM 4. Amend subrule **52.1(6)** by adding the following new paragraph "f":

f. Certain posts or organizations of past or present armed forces members may be tax-exempt corporations for tax years beginning after May 21, 2003. An organization that would have qualified as an organization exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that 75 percent of the members need to be past or present armed forces members is not met because the membership includes ancestors or lineal descendants is considered to be an organization ex-

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empt from federal income tax. This change is effective for tax years beginning after May 21, 2003.

ITEM 5. Amend rule **701—52.1(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 422.21, 422.24A, 422.32, 422.33, 422.34 as amended by 2003 Iowa Acts, House File 674, section 9, 422.34A and 422.36 and 2002 Iowa Acts, House File 2592.

ARC 2832B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues,” Iowa Administrative Code.

These amendments are proposed in response to 2003 Iowa Acts, House File 677.

Item 1 adopts new rule 42.19(15), which provides tax credits for businesses approved by the Iowa Department of Economic Development under the New Capital Investment Program for individual income tax.

Item 2 adopts new rule 52.22(15), which provides tax credits for businesses approved by the Iowa Department of Economic Development under the New Capital Investment Program for corporation income tax. This is similar to the change in Item 1.

Item 3 adopts new rule 58.12(15), which provides tax credits for businesses approved by the Iowa Department of Economic Development under the New Capital Investment Program for franchise tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 3, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 24, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

The following amendments are proposed.

ITEM 1. Amend **701—Chapter 42** by adopting the following **new** rule:

701—42.19(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, House File 677, section 4.

42.19(1) Research activities credit. A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.2(11).

42.19(2) Investment tax credit.

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph “b.” New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

REVENUE DEPARTMENT[701](cont'd)

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high quality jobs created as determined by the Iowa department of economic development:

(1) If no high quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 42.2(10). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.2(10). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business

experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

ITEM 2. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.22(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, House File 677, section 4.

52.22(1) Research activities credit. A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 52.7(3).

52.22(2) Investment tax credit.

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph "b." New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs "e" and "j," purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax pur-

REVENUE DEPARTMENT[701](cont'd)

poses, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high quality jobs created as determined by the Iowa department of economic development:

(1) If no high quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 52.10(4). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the depart-

ment may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

ITEM 3. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.12(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, House File 677, section 4. For information on what credits can be taken under this program, how the investment tax credit is computed and other details about this program, see rule 701—52.22(15). However, the research credit described in 701—subrule 52.22(1) is not available for franchise tax filers. See also the Iowa department of economic development administrative rules for the new capital investment program under 261—Chapter 64.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

ARC 2833B

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 452A.59, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 67, “Administration,” Chapter 68, “Motor Fuel and Undyed Special Fuel,” and Chapter 69, “Liquefied Petroleum Gas—Compressed Natural Gas,” Iowa Administrative Code.

The purpose of these proposed amendments is to implement 2003 Iowa Acts, House File 344 and Senate File 458.

Item 1 adds a new definition for “nonterminal storage facility.”

Item 2 amends the implementation clause for rule 67.1(452A).

Item 3 requires dealers to maintain records similar to others in the fuel distribution chain.

Item 4 reflects the change in the tax rate for gasoline from 20.1¢ to 20.3¢ for the 2003-2004 fiscal year.

Item 5 creates a refund for the tax paid on fuel used by benefited fire districts for public purposes.

Item 6 corrects a reference to a subrule.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 3, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-4250 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 24, 2003.

These amendments are intended to implement Iowa Code chapter 452A as amended by 2003 Iowa Acts, House File 344 and Senate File 458.

The following amendments are proposed.

ITEM 1. Amend rule **701—67.1(452A)** by adding the following **new** definition in alphabetical order:

“Nonterminal storage facility” means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. “Nonterminal storage facility” includes a facility that manufactures products such as alcohol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

ITEM 2. Amend rule **701—67.1(452A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 452A.2 as amended by 2002 2003 Iowa Acts, House Senate File 2622 458.

ITEM 3. Amend rule 701—67.3(452A) by renumbering subrules **67.3(9)** to **67.3(12)** as subrules **67.3(10)** to **67.3(13)** and adopting the following **new** subrule 67.3(9):

67.3(9) Dealer. Every dealer (retailer) is required to keep and preserve the following records:

- a. Purchase invoices.
- b. Purchase records.
- c. Delivery tickets.
- d. Sales invoices.
- e. Sales records.
- f. Canceled checks and check register.

ITEM 4. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.4 20.3¢ per gallon (for July 1, 2002 2003, through June 30, 2003 2004)
LPG	20¢ per gallon
Ethanol-blended gasoline	19¢ per gallon (for July 1, 2002 2003, through June 30, 2003 2004)
Aviation gasoline	8¢ per gallon
Special fuel (diesel)	22½¢ per gallon
Special fuel (aircraft)	3¢ per gallon
CNG	16¢ per 100 cu. ft.

ITEM 5. Amend rule 701—68.8(452A) as follows:

Adopt the following **new** subrule:

68.8(20) Benefited fire districts if the fuel is used for public purposes.

Amend the implementation sentence as follows:

This rule is intended to implement Iowa Code section 452A.17 as amended by 2001 2003 Iowa Acts, House File 736 344, and Iowa Code section 452A.71.

ITEM 6. Amend subrule 69.4(3) as follows:

69.4(3) Type of security. See 701—subrule 62 67.21(2).

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2002 — October 31, 2002	6.25%
November 1, 2002 — November 30, 2002	5.75%
December 1, 2002 — December 31, 2002	6.00%
January 1, 2003 — January 31, 2003	6.00%
February 1, 2003 — February 28, 2003	6.00%
March 1, 2003 — March 31, 2003	6.00%
April 1, 2003 — April 30, 2003	6.00%
May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%

ARC 2806B**UTILITIES DIVISION[199]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 17A.4, 17A.7, 476.1, 476.2, and 476.20 (2003), the Utilities Board (Board) gives notice that the presentation to receive oral comments in Docket No. RMU-03-10, In re: Temperature Trigger for Cold Weather Protections [199 IAC 19.4(15) and 20.4(15)], is rescheduled from October 14, 2003, to October 28, 2003. The oral presentation will begin at 10 a.m. in the Board’s hearing room located at 350 Maple Street, Des Moines, Iowa. The oral presentation is being scheduled to allow interested persons to comment on the amendments proposed in a petition for rule making filed by the Iowa Community Action Association. The proposed amendments would change the temperature below which a utility could not disconnect electric or natural gas service from 20 degrees Fahrenheit to 32 degrees Fahrenheit. The proposed amendments were published in IAB Vol. XXVI, No. 5 (9/3/03) pp. 333-35, as **ARC 2725B**.

ARC 2791B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 189.13, and 2003 Iowa Acts, House File 624, the Department of Agriculture and Land Stewardship hereby adopts new Chapter 57, "Whitetail Deer Hunting Preserves," and amends Chapter 64, "Infectious and Contagious Diseases," and Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The purpose of these new rules and amendments is to implement 2003 Iowa Acts, House File 624, which transferred the regulation of whitetail deer and mule deer raised behind fences from the Department of Natural Resources to the Department of Agriculture and Land Stewardship. The new rules and amendments deal with several issues including the regulation of whitetail deer hunting preserves, the registration of facilities where farm deer are maintained, changes to the Department's chronic wasting disease program for farm deer, and the slaughtering of farm deer under inspection by the Meat and Poultry Bureau. The rules also impose fees to cover the costs of the Department's providing services and administering the programs.

The new whitetail deer hunting preserves rules are very similar to existing rules administered by the Department of Natural Resources relating to non-whitetail deer hunting preserves. Prior to enactment of 2003 Iowa Acts, House File 624, the Department of Natural Resources' rules governed preserves that contained whitetail deer. The purpose of these new rules is to continue regulation of whitetail deer hunting preserves under Department of Agriculture and Land Stewardship jurisdiction in a similar manner.

The purpose of the amendments to the chronic wasting disease program is to incorporate whitetail deer and mule deer into the CWD monitoring program, require mandatory registration of all premises containing Cervidae, lower the age for test-eligible animals to those 16 months of age and older, and require participation in the CWD monitoring program for whitetail deer hunting preserves with some modifications.

Pursuant to Iowa Code section 17A.4(2), the Department of Agriculture and Land Stewardship finds that notice and public participation are impractical because the amendments deal with issues such as the regulation of whitetail deer hunting preserves and the regulation of farm deer, including participation of whitetail deer in the chronic wasting disease program. The timelines for implementation of the amendments require that the amendments be effective immediately so that there is a regulatory scheme in place as soon as possible, especially during the upcoming hunting season. These changes are necessitated by the enactment of 2003 Iowa Acts, House File 624, transferring the regulation of whitetail deer and mule deer raised behind fences to the Department of Agriculture and Land Stewardship from the Department of Natural Resources.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective upon filing with the Administrative Rules Coordinator on September 5, 2003. The amendments confer a benefit on the Iowa whitetail deer industry because they allow producers to participate in the

chronic wasting disease program, and they protect the public by continuing regulation of whitetail deer hunting preserves for the upcoming hunting season.

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to these amendments.

These amendments are also published herein under Notice of Intended Action as **ARC 2790B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 163 and 189A, and 2003 Iowa Acts, House File 624.

These amendments became effective September 5, 2003. The following amendments are adopted.

ITEM 1. Adopt the following **new** chapter:

CHAPTER 57**WHITETAIL DEER HUNTING PRESERVES**

21—57.1(80GA,HF624) Definitions. As used in these rules:

"Annual activity report" means the annual report form provided by the department.

"Boundary sign" means a sign prescribed by the department which, when posted, designates whitetail deer hunting preserve boundaries.

"Department" means the Iowa department of agriculture and land stewardship.

"Licensee" means a person or organization that possesses a valid whitetail deer hunting preserve license issued by the Iowa department of agriculture and land stewardship under this chapter.

"Tag" means a self-adhesive, numbered transportation tag for marking individual whitetail deer taken.

"Whitetail deer" means an animal belonging to the Cervidae family and classified as part of the Virginianus species of the Odocoileus genus, commonly referred to as whitetail deer. However, a whitetail deer does not include any unmarked free-ranging whitetail deer.

"Whitetail deer hunting preserve" means property and facilities designated and licensed for holding, rearing, releasing, or processing whitetail deer for the purpose of hunting, for a fee, over an extended season.

"Whitetail deer hunting preserve license" means a seasonal license that authorizes the holder to establish a whitetail deer hunting preserve for the purpose of holding, propagating, and releasing whitetail deer for hunting purposes.

21—57.2(80GA,HF624) Whitetail deer hunting preserve license application.

57.2(1) Any person who seeks to operate a whitetail deer hunting preserve shall apply to the department for a whitetail deer hunting preserve license. The application shall be on a form prescribed by the department and shall be accompanied by a \$1000 annual licensing fee; however, any person who, on September 1, 2003, held a hunting preserve license issued by the Iowa department of natural resources may operate under that license until that license expires in 2004 or is otherwise terminated by the Iowa department of natural resources. All whitetail deer hunting preserves, no matter how licensed, shall comply with the rules in this chapter.

57.2(2) All whitetail deer hunting preserve license applications shall be accompanied by two copies of a plat map depicting the location of all tracts of land included in the proposed hunting preserve.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

57.2(3) Upon receipt of an application, the department shall inspect the property identified in the application that is to comprise the proposed whitetail deer hunting preserve. The department may license the proposed whitetail deer hunting preserve if the department finds all of the following:

a. That the proposed whitetail deer hunting preserve contains a minimum of 320 acres of contiguous land and not more than 2560 acres.

b. That the total area of all licensed hunting preserves, including preserves licensed by the department of natural resources, and the proposed preserve will not exceed 3 percent of the land area of the county.

c. That the proposed whitetail deer hunting preserve's fences have been certified pursuant to 2003 Iowa Acts, House File 624, section 7, or 2003 Iowa Acts, House File 624, section 22.

d. That the proposed whitetail deer hunting preserve operator has complied with the notification requirements of 2003 Iowa Acts, House File 624, section 8, unless the application is for a renewal of an existing license, including the renewal of a hunting preserve license issued by the department of natural resources prior to September 1, 2003.

57.2(4) A whitetail deer hunting preserve shall seek approval of any proposed additions or deletions to the land area of the preserve at least 30 days prior to the effective date of the proposed addition or deletion. The department will inspect the boundary fences of any additions or deletions to ensure that the fence may be certified. If the addition or deletion results in the whitetail deer hunting preserve's exceeding the minimum or maximum acreage limitations or the county limitation set in subrule 57.2(3), then the department shall deny the proposed deletion or addition. The department shall also deny the addition or deletion if the department determines that the new boundary fences cannot be certified.

57.2(5) The department shall charge the applicant a fee of \$35 per hour for any inspection of a proposed whitetail deer hunting preserve fence done to certify the fence.

21—57.3(80GA,HF624) Chronic wasting disease testing. All whitetail deer hunting preserves shall comply with the chronic wasting disease testing requirements contained in rule 21—64.121(163).

21—57.4(80GA,HF624) Boundary signs required. All licensed whitetail deer hunting preserves shall provide, post, and maintain boundary signs which meet the following minimum specifications:

1. 160-square-inch surface area;
2. Sign material of wood, steel, aluminum or heavy polyplastic; and
3. White/red sign color combination with the message "Licensed hunting preserve."

Boundary signs shall be spaced no more than 500 feet apart.

21—57.5(80GA,HF624) Fencing required. All licensed whitetail deer hunting preserves shall construct and maintain a "deer-proof" boundary fence. Such fence shall be constructed and maintained with a minimum height of 8 feet above ground level. The fence is subject to periodic inspection by the department. The department shall charge an inspection fee of \$35 per hour for a fence inspection.

21—57.6(80GA,HF624) Records and annual report. All licensed whitetail deer hunting preserves shall submit a completed annual activity report no later than April 30 of the license year to the Iowa Department of Agriculture and Land Stewardship, Animal Industry Bureau, Wallace State Office Building, Des Moines, Iowa 50319-0053. All licensed whitetail deer hunting preserves shall retain sales/shipping receipts and health certification records involving the purchase and delivery of any whitetail deer to the licensee. All licensed whitetail deer hunting preserves shall record any transaction involving the sale of whitetail deer by the licensee. All original sales receipts for harvested whitetail deer shall remain with the licensee as a part of the permanent record and a copy shall be provided to the purchasing hunter/client. This record requirement shall also apply to any sale of whitetail deer for private or commercial use, and any sale must be recorded immediately following the event.

Any licensed whitetail deer hunting preserve that has a valid license shall maintain an inventory record of all whitetail deer released and being held on the licensed property at any given time.

21—57.7(80GA,HF624) Whitetail deer transportation tags. The hunter shall place a numbered, self-adhesive whitetail deer tag on a leg of each whitetail deer harvested on a licensed whitetail deer hunting preserve prior to moving the carcass in any manner. The hunter shall, upon taking a whitetail deer, immediately validate the whitetail deer tag by including the following information in the space provided on the tag: sex of animal taken and the hunter's signature. The hunter shall also notch or punch a hole in the corresponding blocks on the whitetail deer tag designating the year, month and day the animal was taken. The whitetail deer tag shall remain attached to the whitetail deer until the deer is processed for consumption.

Whitetail deer tags shall be purchased from the Animal Industry Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053, at a cost of \$1 per whitetail deer tag.

21—57.8(80GA,HF624) Whitetail deer processed at a preserve. A licensed whitetail deer hunting preserve may prepare whitetail deer for hunters/clients by cleaning, dressing, preserving, and packaging the meat. Packaging material shall be a freezer-type paper wrap which shall be sealed and bear the species name, date killed, and whitetail deer hunting preserve name in a legible fashion on the outside of the package. All packages shall have the phrase "NOT FOR SALE" clearly written or stamped on the package. The meat of no other species of animal shall be mixed with the whitetail deer packaged or processed under this rule. The whitetail deer tag shall remain with the meat during processing and shipment.

21—57.9(80GA,HF624) General conditions for licenses.

1. Records and facilities shall be available for inspection by employees of the department during reasonable hours.

2. All records and reports must be kept current and shall reflect a true and accurate account of the licensee's activities.

3. The department's animal industry bureau must be notified within 30 days in writing if the licensee ceases operation as a whitetail deer hunting preserve.

4. A licensee must seek to renew the whitetail deer hunting preserve license within 30 days following the expiration date. Renewal requests received after this period may be considered as a new application pursuant to rules 57.2(80GA,HF624) and 57.3(80GA,HF624).

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

5. The department may revoke or suspend a license if it finds that a licensee has committed a violation of the rules of this chapter, applicable provisions of 21—Chapter 64 or 2003 Iowa Acts, House File 624, or is more than 90 days delinquent in paying required fees.

6. All new whitetail deer hunting preserve license applications shall be considered on a first-come, first-served basis following April 30 of each year.

21—57.10(80GA,HF624) Fee retention. All fees collected by the department under this chapter shall be retained by the department to pay for the costs of administering this program and other programs relating to farm deer.

These rules are intended to implement 2003 Iowa Acts, House File 624.

ITEM 2. Amend the following definitions in **21—64.104(163)**:

“Adjacent herd” means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.

2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past ~~four~~ five years as determined by the designated epidemiologist.

“Cervidae” means elk, red deer, fallow deer, sika deer, *whitetail deer*, *mule deer* and related species and hybrids of these species.

“Cervid CWD surveillance identification program” or “CCWDSI program” means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae ~~over 18 16~~ months of age *and older* including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

“CWD exposed” or “exposed” means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past ~~four~~ five years.

“Official cervid identification” means one of the following:

1. A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.

4. A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Elk Breeders Association.

5. *A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Deer Farmers Association.*

ITEM 3. Amend subrule 64.106(1) as follows:

64.106(1) Slaughter establishments. All slaughtered Cervidae ~~over 18 16~~ months of age *and older* must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

ITEM 4. Amend 21—64.109(163) as follows:

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules shall be removed as follows:

1. For herds of origin, quarantines shall be removed after ~~four~~ five years of compliance with rules 64.104(163) through 64.120(163).

2. For herds having contact with affected or exposed animals, quarantines shall be removed after ~~four~~ five years of compliance with rules 64.104(163) through 64.120(163).

3. For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.

ITEM 5. Amend 21—64.119(163) as follows:

21—64.119(163) Intrastate movement requirements.

64.119(1) All intrastate movements of Cervidae other than to a state or federally inspected slaughter establishment shall be accompanied by an intrastate movement certificate of veterinary inspection signed by a licensed, accredited veterinarian. Movement, other than direct movement to slaughter, shall only be allowed from herds that have ~~satisfactorily completed at least one year~~ *been enrolled* in the Iowa CWD monitoring program.

64.119(2) Such intrastate movement certificate shall include all of the following:

a. Consignor’s name and address.

b. Consignee’s name and address.

c. Individual, official identification of each animal.

d. CWD herd premises number, the herd status level, the anniversary date, and the expiration date.

e. *Brucellosis and Tuberculosis test results, including testing dates and laboratories.*

ITEM 6. Adopt the following new rules:

21—64.121(163) Whitetail deer hunting preserve—mandatory participation in CWD monitoring and surveillance program. Whitetail deer hunting preserves, including those required to be licensed pursuant to 21—57.2(80GA,HF624), must participate in the CWD monitoring and surveillance program.

64.121(1) Animal identification. All Cervidae released into a licensed whitetail deer hunting preserve after September 15, 2003, must be officially identified.

64.121(2) Sampling rate. Sampling for CWD surveillance must occur at a minimum rate sufficient to provide 90 percent confidence that the disease will be detected in the premises population if present at the rate of 5 percent of the animals. All animals added to preserves pursuant to subrule 64.121(1) must be tested upon death or removal from the premises.

21—64.122(163) Mandatory farm deer premises registration.

64.122(1) Commencing January 1, 2004, all premises with Cervidae must be registered with the department. Such registration shall be renewed annually and expire on December 31 of the year of registration. Registration fees of \$100 annually will be required to be submitted with the registra-

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tion form; however, a licensed whitetail deer hunting preserve shall be exempt from paying a registration fee in addition to the whitetail deer hunting preserve licensing fee.

64.122(2) Fencing. All premises containing Cervidae must be fenced in a manner to safely contain the Cervidae within the premises and to prevent egress and ingress of the captive animals and free-roaming Cervidae. Such fence shall be at least eight feet in height and be of sound construction.

21—64.123(163) Fees. Farm deer producers may elect to have their herds enrolled in this voluntary program utilizing the services of a departmental veterinarian. Farm deer producers who enroll in the program shall pay the following fees:

1. Commencing January 1, 2004, an annual chronic wasting disease enrollment fee of \$100. The enrollment shall be renewed annually with an accompanying fee of \$100.

2. Veterinarian inspection fee for utilizing the services of departmental veterinarians will be on an hourly basis. The hourly rate charged for this service will be \$50 per hour.

21—64.124(163) Fee retention. All fees collected by the department relating to farm deer or Cervidae shall be retained by the department to pay for the costs of administering this program and other programs relating to farm deer.

ITEM 7. Adopt the following new rules:

21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.

1. All federal regulations adopted in 21—76.1(189A).

2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III of the Code of Federal Regulations, revised as of August 29, 2003.

This rule is intended to implement Iowa Code chapter 189A and 2003 Iowa Acts, House File 624.

21—76.15(189A) Fees.

1. The fee for inspecting farm deer shall be \$50 per hour for time spent, and \$75 per hour for overtime inspection.

2. The producer shall be responsible for paying the shipping costs of CWD samples obtained by department inspection personnel during inspected slaughter of farm deer as part of the department's chronic wasting disease testing program.

3. All fees collected by the department under this rule shall be retained by the department to pay for the costs of administering this program and other programs relating to farm deer.

This rule is intended to implement Iowa Code chapter 189A and 2003 Iowa Acts, House File 624.

[Filed Emergency 9/5/03, effective 9/5/03]

[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2808B

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 68, "Iowa Public Charter Schools," Iowa Administrative Code.

Notice of Intended Action was submitted on August 25, 2003, by the State Board. On August 27, 2003, federal funding was received for the establishment and implementation

of public charter schools in the state. The last day an application can be filed by stakeholders is October 1, 2003. In order to allow stakeholders to file applications for the 2004-2005 school year, it is necessary to have rules in place prior to the deadline date of October 1, 2003.

The content of this filing is the same as the Notice of Intended Action, which was published in the Iowa Administrative Bulletin as **ARC 2740B** on September 17, 2003. Public hearings are scheduled to be held over the ICN on October 10, 2003, at the sites identified in the Notice. Informational meetings were held on September 23, 2003, at the same ICN sites.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and unnecessary because this chapter reflects the intent of the original legislation which was clearly communicated to the public in the Notice of Intended Action on the original rules and because of the need to clarify the application deadline prior to the October 1, 2003, date.

The Department finds that the amendment confers a benefit on school districts and stakeholders by clarifying the guidelines for filing an application prior to the October 1, 2003, date. Therefore, the amendment is Adopted and Filed Emergency pursuant to Iowa Code section 17A.5(2)"b"(2).

These rules are intended to implement 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172.

These rules became effective September 12, 2003.

The following new chapter is adopted.

CHAPTER 68

IOWA PUBLIC CHARTER SCHOOLS

281—68.1(79GA,ch1124) Purpose. The purpose of a public charter school is established pursuant to 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172. A charter school may be established by creating a new school within an existing public school or by converting an existing public school to charter status. This chapter provides the criteria and weighting for those criteria that the state board shall use to determine if an application shall be selected as one of ten authorized pilot public charter schools.

281—68.2(79GA,ch1124) Definitions.

"Charter school" means a new school designated by the state board and created within an existing attendance center or a new school created by converting an existing attendance center to charter status.

"Charter school authorizers" means the local school board in partnership with the state board of education.

"Department" means the Iowa department of education.

"School board" means a board of directors regularly elected by the registered voters of a school district.

"State board" means the state board of education.

281—68.3(79GA,ch1124) Application to a school board. Beginning April 28, 2003, a local school board may begin accepting applications from the principal, teachers, or parents or guardians of students at an existing public school for the planning and operation of a charter school within the boundary lines of an existing public school district. Local school boards may receive applications for both charter school planning and for charter school status, and could be eligible to receive both levels of financial support (pending available federal funding). Both charter school planning and charter school status applications must be approved by the local school board.

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Prior to accepting applications, a local school board shall adopt procedures, criteria, and weighting of the criteria that will determine whether an application is approved or denied. The local school board may adopt the procedures, criteria, and weighting of the criteria as established in this chapter for public charter schools. In addition, any application that has been submitted and for which subsequent school board action has been taken shall, at minimum, meet the provisions of 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172. An application that is received on or before October 1 of a calendar year shall be considered for approval and for the establishment of a charter school at the beginning of the school district's next school year or at a time agreed to by the applicant and the local school board.

However, a local school board may receive and consider applications after October 1 at its discretion. A local school board, by majority vote, must approve or deny the application within 60 calendar days after the application is received. An application approved by the local school board and state board of education shall constitute, at a minimum, an agreement between the local school board and the charter school for the operation of the charter school for no less than four years.

281—68.4(79GA,ch1124) Review process.

68.4(1) Application to the department. The department will review two types of public charter school applications: (1) charter school planning, and (2) charter status. A planning application is to be of a duration no longer than one year and based on the intent of moving to public charter school status. A charter status application may be made without first applying for planning.

Upon a local school board's approval of an application for the proposed establishment of a charter school, the local school board must submit an application for such establishment to the department. The department shall appoint, at minimum, seven individuals knowledgeable in student achievement and nontraditional learning environments to review each application for charter status. A reviewer shall not participate in the review of any application in which the individual may have an interest, direct or indirect.

68.4(2) Ranking of applications. Applications shall be ranked on a point system, and applications shall be recommended in rank order beginning with the application with the highest points. In the event that two or more applications tie, the applications will be reviewed until the tie is broken.

The maximum points for an application shall be 100. The maximum points for each criterion provided in 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172, shall be as follows:

a. Overview. The mission, purpose, innovation, and specialized focus of the charter school. The maximum number of points that can be awarded is 10.

b. Organization and structure. The maximum number of points that can be awarded is 25. The description of the organization and structure shall include:

(1) The charter school governance and bylaws.

(2) The method for appointing or forming an advisory council for the charter school. The membership of an advisory council appointed or formed in accordance with this chapter shall not include more than one member of the local school board. The advisory council shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(3) The organization of the school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the school.

(4) The method for admission to the public charter school. The admission policy shall support the purpose and specialized mission of the public charter school. A lottery process must be described in the application for a public charter school in the event that the number of applicants exceeds the capacity of the public charter school. The admission process shall not discriminate against prospective students on the basis of race, creed, color, sex, national origin, religion, ancestry, or disability, except if a charter school limits enrollment pursuant to 2002 Iowa Acts, chapter 1124, section 4, as amended by 2003 Iowa Acts, Senate File 172, section 1.

(5) The number and qualifications of teachers and administrators to be employed. Hiring shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(6) Procedures for teacher and administrator evaluation.

(7) Procedures for identification and implementation of professional development for teachers and administrators as required under 281—12.7(256) and the Iowa teaching standards, including the opportunity to be responsible for the learning program at the school site.

(8) A plan of operation to be implemented if the public charter school revokes or fails to renew its contract.

(9) The specific statutes, administrative rules, and school board policies with which the public charter school does not intend to comply.

c. Facilities/financial support. The maximum number of points that can be awarded is 25. The description of the facilities/financial support shall include:

(1) The provision of school facilities.

(2) The financial plan for the operation of the school including, at minimum, a listing of the support services the school district will provide, and the public charter school's revenues, budgets, and expenditures.

(3) Assurance of the assumption of liability by the public charter school.

(4) The types and amounts of insurance coverage to be obtained by the public charter school.

(5) The means, costs, and plan for providing transportation for students attending the public charter school.

d. Student achievement. The maximum number of points that can be awarded is 40. The description shall include:

(1) Performance goals and objectives in addition to those required under Iowa Code section 256.7(21) and 281—Chapter 12, by which the school's student achievement shall be judged, the measures to be used to assess progress, and the current baseline status with respect to the goals.

(2) The educational program and curriculum utilizing different and innovative instructional methodologies that reflect sensitivity to gender, racial, ethnic and socioeconomic backgrounds. Services to be offered to all prospective students, including students with disabilities pursuant to the requirements of 281—Chapter 41, English Language Learners (ELL), and other students considered "at risk," must also reflect the same sensitivities.

(3) A statement that indicates how the public charter school will meet the purpose of a public charter school as outlined in 2002 Iowa Acts, chapter 1124, section 1, subsection 3, and the minimum state and federal statutory requirements of a public charter school as outlined in 2002 Iowa Acts, chapter 1124, section 4, subsection 2.

68.4(3) State board review. The state board shall review the recommendations provided by the department. The state board shall, by a majority vote, approve or deny an applica-

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tion within 60 calendar days of receipt of the application and shall notify applicants within 14 days of the state board's decision.

These rules are intended to implement 2002 Iowa Acts, chapter 1124, as amended by 2003 Iowa Acts, Senate File 172.

[Filed Emergency 9/12/03, effective 9/12/03]
[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2792B**CREDIT UNION DIVISION[189]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 533.54, the Credit Union Review Board hereby rescinds Chapter 4, "Procedure for Adoption of Rules," Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

The rules in Chapter 4 describe the procedures for adoption of rules. The proposed amendment is made pursuant to Executive Order Number 8, and the rules are based on the uniform rules and Iowa Code chapter 17A.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2679B**. No public comment was received on the rules. These rules are identical to those published under Notice.

These rules were adopted by the Board on September 10, 2003.

These rules shall become effective November 5, 2003.

These rules are intended to implement Iowa Code section 17A.4.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 4] is being omitted. These rules are identical to those published under Notice as **ARC 2679B**, IAB 8/6/03.

[Filed 9/10/03, effective 11/5/03]
[Published 10/1/03]

[For replacement pages for IAC, see IAC Supplement 10/1/03.]

ARC 2799B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2674B** on August 6, 2003. The IDEB Board adopted the amendments on September 11, 2003.

The amendments incorporate legislative revisions to VAAPFAP in accordance with 2003 Iowa Acts, House File 692, section 87.

Item 1 adds definitions of "agricultural biomass industry," "agricultural biotechnology industry," "alternative energy industry," "organic products," and "producer-owned, value-added business."

Item 2 expands the number of program components to include agricultural business facilities in the biotechnology industry, agricultural biomass industry and alternative energy industry, and facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets.

Item 3 removes the fixed calculation by which the amount of an award is determined.

Item 4 includes a provision to notify the public that the Department will consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

Item 5 revises the evaluation and rating criteria.

A public hearing on the proposed amendments was held on August 27, 2003. No comments were received.

The only change to the proposed amendments was a minor grammatical correction to the third unnumbered paragraph of rule 261—57.8(5E). The phrase "in an amount not to exceed \$20,000 per project" was repositioned in the sentence to clarify that there is a \$20,000 per project limit on contracts with consultants assisting in project evaluation.

These amendments are intended to implement Iowa Code section 15E.111 as amended by 2003 Iowa Acts, House File 692, section 87.

These amendments will become effective on November 5, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 57] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2674B**, IAB 8/6/03.

[Filed 9/11/03, effective 11/5/03]
[Published 10/1/03]

[For replacement pages for IAC, see IAC Supplement 10/1/03.]

ARC 2800B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 58, "New Jobs and Income Program," Iowa Administrative Code.

The amendments amend the definitions of "community" and "full-time"; limit the amount of investment (or insurance premium) tax credit an eligible business may receive to the amount that is stated in the agreement; address how extension requests will be handled for the exemption from land ownership restrictions for nonresident aliens; clarify when bonuses, commissions, and overtime pay may be used in wage calculations; implement the new waiver provisions; clarify when repayment of benefits would occur and how the repayment would be calculated; and address amendments to approved projects.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2675B** on August 6, 2003. A public hearing to receive comments about the amendments was held on August 27, 2003. No comments were received. One nonsubstantive change from the Notice has been made. All references to "DRF" have been changed to "DR" to reflect the change in name from "Department of Revenue and Finance" to "Department of Revenue."

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The IDED Board adopted the amendments on September 11, 2003.

These amendments are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House Files 612, 677 and 681.

These amendments will become effective on November 5, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [58.2, 58.4, 58.7, 58.9 to 58.15] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2675B**, IAB 8/6/03.

[Filed 9/11/03, effective 11/5/03]
[Published 10/1/03]

[For replacement pages for IAC, see IAC Supplement 10/1/03.]

ARC 2793B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

These amendments clarify the Department's administrative rules by updating references to the Code of Federal Regulations (CFR) and the National Fire Protection Association's (NFPA) Life Safety Code for hospitals. Additionally, the amendments bring the chapter into compliance with the Governor's Executive Order Number 8.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2643B**. No public comments were received on the amendments. These amendments are identical to those published under Notice.

The Hospital Licensing Board reviewed the amendments at its June 25, 2003, meeting and unanimously approved them. The amendments also were presented to the State Board of Health for initial review at the Board's July 9, 2003, meeting. The Board of Health again reviewed the amendments at its September 10, 2003, meeting and unanimously approved them.

Item 1 of the amendments updates the Department's administrative rules dealing with hospital laboratory services, and Item 2 updates the rules dealing with Life Safety Code requirements for hospitals. It has been determined that adoption of the amendments will have no financial impact on the Department or the regulated entities.

These amendments will become effective on November 5, 2003.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

The following amendments are adopted.

ITEM 1. Amend subrule 51.18(3) as follows:

51.18(3) The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR, Part 493, October 1, 1997 2001.

ITEM 2. Amend subrule 51.52(3) as follows:

51.52(3) Life Safety Code. Facilities and construction shall be in accordance with National Fire Protection Association (NFPA) Standard 99 (Standards for Health Care Facilities-1999 edition), Standard 101 (Life Safety Code-1985 2000 edition), and rules of local authorities. Facilities and construction shall be approved by the state fire marshal or local authority having jurisdiction.

[Filed 9/11/03, effective 11/5/03]
[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2830B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 1, "Administrative and Regulatory Authority," and Chapter 11, "Examination of Public Records," Iowa Administrative Code.

These amendments identify what types of licensee and personnel information are public records and make provision for obtaining these public records. The amendments set the requirements for printed matter and advertising in the Board's newsletter, a nonpublic forum.

These amendments were published in the Iowa Administrative Bulletin on June 25, 2003, as **ARC 2558B**. Changes from the Notice of Intended Action are as follows:

- In subrule 1.4(6), paragraph "g" was added providing for newsletter advertisement of private and public notices of scholarships and grant opportunities.
- In subrule 11.4(2), "may" was changed to "shall." This clarifies that the Board will not publish home addresses of licensees on its Web site.
- Rule 11.5(17A,22,147,152,272C) was changed to clarify the requirement that a roster request is to be written. This is consistent with current Board practice. A statement is included to provide direction to accessing the roster forms on the Board's Web site.

These changes were made at the request of the Iowa Nurses' Association.

These amendments will become effective November 5, 2003.

These amendments are intended to implement Iowa Code chapters 147, 152 and 272C.

The following amendments are adopted.

ITEM 1. Rescind subrule 1.3(6) and insert in lieu thereof the following **new** subrule:

1.3(6) Public records and rosters. Public records and rosters of licensees shall be made available in accordance with Iowa Code chapter 22 and sections 147.8 and 147.43 and 655—Chapter 11.

ITEM 2. Adopt the following **new** rule:

655—1.4(147,152,272C) Newsletter.

1.4(1) The board may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated profession. This official information may include statutory requirements,

NURSING BOARD[655](cont'd)

statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education and professional development), board business, board meetings and board news.

1.4(2) When the board is required or allowed to mail notices to licensees about matters such as license renewal, the board may include such notices in the newsletter.

1.4(3) The newsletter may include vendor advertising to enable the board to communicate with licensees and other interested persons without expending moneys appropriated from the state's general fund, and to provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.

1.4(4) All newsletter advertising must be consistent with the board's mission. The board derives its legal authority for regulating and enforcing regulations for nursing education, nursing practice and continuing education for nurses under the provisions of Iowa Code chapters 147, 147A, 152, 152E and 272C. The mission of the board is to protect the public health, safety and welfare by ensuring that nursing is practiced by at least minimally competent licensed individuals who practice within their authorized scope of practice.

1.4(5) All newsletter advertising must be professional and respectful of the nature of the regulated profession, established as a nonpublic forum, and consistent with rules established by the board. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the profession or the regulation of the profession. Political, advocacy or issue-oriented advertising shall not be permitted.

1.4(6) Newsletter advertising shall be considered consistent with the board's mission if the advertising pertains to commercial offerings of goods or services in one or more of the following areas:

- a. Entry into the profession, such as prelicense education or internship opportunities.
- b. A licensee's compliance with statute or board rules, such as continuing education courses or publications containing professional standards.
- c. The lawful and competent performance of the profession, e.g., malpractice insurance, or goods or services uniquely used in the profession.
- d. Employment opportunities in the profession.
- e. A professional's marketing of professional services to other professionals.
- f. Education programs designed to enhance credentials of professionals, or professional-specific degrees.
- g. Private and public notices of scholarship and grant opportunities.

1.4(7) Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the board's advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertising must include a prominent disclaimer notifying the reader that the board plays no role in the solicitation of advertising and does not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.

ITEM 3. Rescind subrule **11.2(4)**, paragraph "**b**," subparagraph (3), and insert in lieu thereof the following **new** subparagraph:

(3) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The board maintains files containing information about employees, their families and dependents, and applicants for positions with the board. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

ITEM 4. Adopt the following **new** rule:

655—11.4(17A,22,147,152,272C) Notice to suppliers of information. When the board requests a person to supply personal information, the board shall notify the person of the use that will be made of the information, which persons outside the board might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the requested information. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

11.4(1) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications required for licensure or for sitting for an examination, as provided by statutes, board rules and application forms. Failure to provide the requested information may result in denial of the application. Some requested information, such as a college transcript, social security number, examination score, or criminal history, is confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information freely available for public examination.

11.4(2) Home address. License applicants and licensees are requested to provide their home addresses. These addresses are treated as open records. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board does not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board shall refrain from placing the home address on its Web site and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

11.4(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by statutes, board rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as criminal history, may be confidential under state or federal law.

11.4(4) Investigations. Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to time-

NURSING BOARD[655](cont'd)

ly respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4), but may become public if introduced at a hearing that is open to the public, contained in a final order, or filed with a court of judicial review.

ITEM 5. Adopt the following **new** rule:

655—11.5(17A,22,147,152,272C) Rosters. Rosters of licensees shall be made available to the public in accordance with Iowa Code chapter 22 and sections 147.8 and 147.43.

11.5(1) Roster information and forms may be accessed via the board's Web site under "General Information" and "Rosters."

11.5(2) Upon receipt of a written request, the board shall send a form, to be signed by the purchaser, which denotes that materials or publications shall not be published in any manner which could be construed by the public to mean that the board or any of its employees support, endorse, or approve the materials or publications to be disseminated.

11.5(3) A fee shall be assessed the person requesting a roster based on the rate of charge set by the outside vendor and the hourly wage of the office employee producing the roster. The fee assessed shall be paid directly to the board and shall be considered a repayment receipt as defined in Iowa Code section 8.2. The roster shall not be released until payment or purchase order has been received.

11.5(4) The executive director may authorize the release of a roster of Iowa licensees without cost in the case of any emergency whereby the interest of the public warrants immediate access to health care personnel.

11.5(5) State agencies that request a roster of Iowa licensees will be invoiced at cost as an electronic expenditure correction.

[Filed 9/12/03, effective 11/5/03]

[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2802B

PROFESSIONAL LICENSING AND REGULATION DIVISION[193]

Adopted and Filed

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Division hereby amends Chapter 1, "Organization and Operation," Iowa Administrative Code.

The amendment establishes guidelines for the Division's newsletter. This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2510B** on May 28, 2003. The adopted amendment is identical to the Notice. The acting division administrator approved the amendment on September 11, 2003.

This amendment will become effective November 5, 2003.

This amendment is intended to implement Iowa Code chapter 546.

The following amendment is adopted.

Adopt the following **new** rule:

193—1.9(272C,542,542B,543B,543D,544A,544B) News-letter.

1.9(1) The administrator may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, and board news.

1.9(2) When boards are required or allowed to mail notices to licensees about matters such as license renewal, the boards may include such notices in the newsletter.

1.9(3) The newsletter may include vendor advertising to:

a. Enable the boards to communicate with licensees and other interested persons without expending moneys appropriated from the state's general fund; and

b. Provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.

1.9(4) All newsletter advertising must be consistent with the boards' missions. The primary mission of the boards in the division is to provide progressive, efficient and professional regulation and enforcement of the professions; to protect the public through examination, licensing and regulation of the professions; and to enhance economic growth through the responsible, competent, and ethical performance of the professions.

1.9(5) All newsletter advertising must be professional and respectful of the nature of the regulated professions, established as a nonpublic forum, and consistent with guidelines established by the administrator. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the professions or the regulation of the professions. Political, advocacy or issue-oriented advertising shall not be permitted.

1.9(6) Newsletter advertising shall be considered consistent with the boards' missions if it pertains to commercial offerings of goods or services in one or more of the following areas:

a. Entry into the profession, such as prelicense education or internship opportunities.

b. A licensee's compliance with statutes or rules, such as continuing education courses or publications containing professional standards.

c. The lawful and competent performance of the profession, e.g., errors and omissions insurance, or goods or services uniquely used in the profession, such as land surveying equipment or seals for design professionals.

d. Employment opportunities in the profession.

e. A professional's marketing of professional services to other professionals, e.g., a design professional's advertising the availability of specialized design services for other design professionals.

f. Education programs designed to enhance credentials of professionals, or profession-specific degrees.

1.9(7) Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the administrator's advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all

PROFESSIONAL LICENSING AND REGULATION DIVISION[193](cont'd)

respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertising must include a prominent disclaimer notifying the reader that the boards play no role in the solicitation of advertising, and do not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.

[Filed 9/11/03, effective 11/5/03]

[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2824B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 136A.5 and 135.11, the Department of Public Health amends Chapter 4, "Birth Defects Institute," Iowa Administrative Code.

These amendments provide definitions for clarification of the programs within the Birth Defects Institute, augment the newborn screening policy of the Iowa Neonatal Metabolic Screening Program, increase the newborn metabolic screening fee, and provide for the surveillance of the individuals identified by newborn metabolic screening and of selected neuromuscular disorders.

Item 1 adds new definitions to Chapter 4.

Item 2 adds other amino acid, organic acid, and fatty oxidation disorders detectable by tandem mass spectrometry to the newborn metabolic screening panel. This item also adds monitoring and tracking of individuals identified as having genetic or metabolic diseases through the newborn metabolic screening program.

Items 3 and 4 rescind a subrule and a subparagraph that refer to the county registrar.

Item 5 provides consistency in terms used within Chapter 4.

Item 6 changes the newborn metabolic screening fee.

Item 7 adds statewide, active surveillance for selected neuromuscular disorders to the description of the Neuromuscular and Other Related Genetic Disease Program.

Item 8 adds new subrules for the surveillance of selected neuromuscular disorders and central registry activities.

Item 9 changes the term "a local birth-to-three coordinator" to "an early ACCESS service coordinator."

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2683B**. A public hearing was held over the Iowa Communications Network (ICN) on August 26, 2003.

Changes have been made to the Notice of Intended Action to correspond with the change in the responsibility of county registrars in the procedures for Vital Records: In Item 1, in rule 641—4.2(136A), the definition for "county registrar" has not been adopted. Items 3 and 4, which rescind subrule 4.3(3) and subparagraph 4.3(4)"a"(4), respectively, have been added.

In addition, in Item 8, the phrase "for the period of time that adequate financial support is available for this project," inadvertently omitted from the Notice, has been added to subrule 4.6(4).

Item 9 has been added as a result of the comments of the Department of Education.

The State Board of Health adopted these amendments on September 10, 2003.

These amendments will become effective on November 5, 2003.

These amendments are intended to implement Iowa Code chapter 136A.

The following amendments are adopted.

ITEM 1. Amend rule **641—4.2(136A)** by adding the following **new** definitions in alphabetical order:

"Birthing facility" means the facility in which a child is born.

"Consulting physician" means a physician designated by the birth defects institute to interpret test results and provide consultation to a licensed health care provider.

"Health care provider" means a licensed physician, nurse practitioner, certified nurse midwife, or physician assistant providing care to an individual.

"Receiving facility" means the facility receiving an infant from a birthing facility.

"Tandem mass spectrometry" means the use of tandem mass spectrometer and associated software to test a newborn screening sample.

"Transferring facility" means the birthing facility which transfers the infant to a hospital.

ITEM 2. Amend subrule 4.3(1) as follows:

4.3(1) Newborn screening policy.

a. It shall be the policy of the state of Iowa that all All newborns and infants born in the state of Iowa shall be screened for ~~hypothyroidism, medium chain acyl Co-A dehydrogenase deficiency, phenylketonuria, and other amino acid, organic acid, and fatty oxidation disorders detectable by tandem mass spectrometry; hypothyroidism; galactosemia; hemoglobinopathies; congenital adrenal hyperplasia, medium chain acyl Co-A dehydrogenase deficiency; and~~ biotinidase deficiency.

b. As new disorders are recognized and new technologies and tests become available, the institute shall follow protocols developed by the department in regard to the addition of disorders to or deletion of disorders from the screening panel. The state board of health shall provide final approval for the addition of new disorders to the screening panel.

c. The institute may monitor individuals identified as having a genetic or metabolic disease for the purpose of determining whether early detection, treatment, and counseling lead to the amelioration or avoidance of the adverse outcomes of the disease. Birthing facilities and health care providers shall provide patient data and records to the institute upon request to facilitate the monitoring. Any identifying information provided to the institute shall remain confidential pursuant to Iowa Code section 22.7(2).

ITEM 3. Rescind and reserve subrule **4.3(3)**.

ITEM 4. Rescind and reserve subrule **4.3(4)**, paragraph "**a**," subparagraph (4).

ITEM 5. Amend subrule **4.3(7)**, paragraph "**c**," subparagraph (3), as follows:

(3) Before research can commence, proposals shall be approved by the ~~appropriate human subjects review committees~~ *researcher's institutional review board*, the birth defects advisory committee, and the department.

ITEM 6. Amend subrule **4.3(8)**, paragraph "**b**," as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. The department shall annually review and determine the fee to be charged for all activities associated with this program. The review and fee determination shall be completed at least one month prior to the beginning of the fiscal year. The newborn metabolic screening fee shall be \$46.56 beginning July August 1, 2002 2003.

ITEM 7. Amend rule 641—4.6(136A), introductory paragraph, as follows:

641—4.6(136A) Neuromuscular and other related genetic disease program (NMP). This program provides comprehensive services statewide for individuals and families with neuromuscular disorders through outreach clinics *and statewide, active surveillance for selected neuromuscular disorders.*

ITEM 8. Add **new** subrules 4.6(4) through 4.6(6) as follows:

4.6(4) Surveillance for selected neuromuscular disorders. The central registry for selected neuromuscular disorders may conduct active, statewide surveillance. The surveillance is to determine the occurrence and trends of the selected neuromuscular disorders, to conduct thorough and complete epidemiological surveys through long-term follow-up and to assist in the planning and provision of services to children with selected neuromuscular disorders for the period of time that adequate financial support is available for this project.

4.6(5) Definition. Neuromuscular disorders include diagnosis involving the muscle, nerve, or the neuromuscular junction. These disorders may be diagnosed at any age of life, and annual follow-up of patients is required until death. Selected neuromuscular disorders include Duchenne and Becker Muscular Dystrophies.

4.6(6) Central registry activities.

a. The institute shall establish an agreement with the central registry to conduct statewide, active surveillance of selected neuromuscular disorders.

b. The central registry shall use the muscular dystrophy coding scheme defined by the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service.

c. The central registry staff shall review hospital records, clinical charts, physician records, vital records and prenatal records pursuant to 641—1.3(139A) and any other information that the central registry deems necessary and appropriate for muscular dystrophy surveillance.

ITEM 9. Amend subrule **4.7(6)**, paragraph **“b,”** as follows:

b. ~~A local birth-to-three coordinator~~ *An Early ACCESS service coordinator* or an agency under contract with the department to administer the children with special health care needs program, upon receipt of written consent from the parent or guardian of the infant or child.

[Filed 9/12/03, effective 11/5/03]

[Published 10/1/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/1/03.

ARC 2823B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby amends Chapter 7, “Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child Care Centers,” Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers. These amendments define who can sign the medical exemption form; reword the religious exemption section; define a valid certificate; define the use of the immunization registry; and define the release of immunization information. The amendments also provide some general cleanup of the chapter, including definitions and cross references to the Iowa Code.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2684B**. A public hearing was held on August 26, 2003. Two people who represented the Christian Science Church and who were supportive of the amendments attended the public hearing.

The Department received two letters from physicians and one letter from parents in support of the changes and one letter from a school nurse who supports the changes but who wanted the Department to consider changing the January 1, 2004, date to correspond to the date on which her school semester starts. The Department also received one anonymous letter which expressed opposition to any type of religious exemption but which suggested that the Department consider a philosophical exemption instead. A letter was received from Children's Healthcare is a Legal Duty, Inc., questioning the change made regarding religious exemptions. No changes were made to the amendments as a result of these comments.

The following changes have been made to the Notice of Intended Action as a result of comments received from the Attorney General's office and from an attorney with Iowa Health Systems. The word “may” as it relates to the release of information has been changed to “shall” in the introductory paragraph of subrule 7.10(3) and in rule 641—7.11(22).

The introductory paragraph of subrule 7.10(3) now reads as follows:

“7.10(3) Release of information to the registry. Enrolled users shall provide immunization information including identifying and demographic data to the registry. Information provided may include, but is not limited to, the following:”

Rule 641—7.11(22) now reads as follow:

“641—7.11(22) Release of immunization information.

“7.11(1) Between a physician, a physician assistant, a nurse in an attending physician's office, a nurse practitioner, or a county public health nurse and the elementary or secondary school or licensed child care center that the child attends. A physician, a physician assistant, a nurse in an attending physician's office, a nurse practitioner, or a county public health nurse shall disclose a student's immunization information, including the student's name, date of birth, and demographic information, the day, month, year and name of vaccine administered, and clinic source and location, to an elementary or secondary school or a licensed child care center upon written or verbal request from the elementary or secondary school or licensed child care center. Written or verbal

PUBLIC HEALTH DEPARTMENT[641](cont'd)

permission from a student or parent is not required to release this information to an elementary or secondary school or licensed child care center.

“7.11(2) Among physicians, physician assistants, nurses in an attending physician’s office, nurse practitioners, and county public health nurses. Immunization information, including the student’s name, date of birth, and demographic information, the day, month, year and name of vaccine administered, and clinic source and location, shall be provided by one physician, physician assistant, nurse in an attending physician’s office, nurse practitioner, or county public health nurse to another health care provider without written or verbal permission from the student or the parent.”

The State Board of Health adopted these amendments on September 10, 2003.

These amendments are intended to implement Iowa Code sections 139A.8 and 22.7(2).

These amendments will become effective on November 5, 2003.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 7] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2684B**, IAB 8/6/03.

[Filed 9/12/03, effective 11/5/03]

[Published 10/1/03]

[For replacement pages for IAC, see IAC Supplement 10/1/03.]

ARC 2822B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby amends Chapter 7, “Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child Care Centers,” Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at an elementary or secondary school or licensed child care center. The Iowa General Assembly passed 2003 Iowa Acts, House File 641, which adds the varicella vaccine to the list of immunizations required for enrollees in child care centers and public or nonpublic elementary or secondary schools. These amendments provide informa-

tion about the dose and timing of this vaccine. Child care centers and schools are expected to comply with this requirement as soon as possible. Complete compliance is expected by January 1, 2004.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2653B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 2652B**.

A public hearing was held on August 26, 2003. No one appeared in regard to these amendments. The Department received two letters from physicians and one from parents in support of the changes and one letter from a school nurse who was in support of the changes but who wanted the Department to consider changing the January 1, 2004, date to correspond to the date on which her school semester starts. No changes were made as a result of these comments.

These amendments are identical to the amendments published under the Notice of Intended Action and Adopted and Filed Emergency.

These amendments were adopted by the State Board of Health on September 10, 2003.

These amendments shall become effective November 5, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 139A.8 as amended by 2003 Iowa Acts, House File 641.

The following amendments are adopted.

ITEM 1. Amend subrule 7.4(5) as follows:

7.4(5) 18 months of age and older: Applicants enrolled or attempting to enroll in a licensed child care center shall have received:

a. to c. No change.

d. At least one dose of rubeola (measles) and rubella containing vaccine received after the applicant was at least 12 months of age; *and*

e. *At least one dose of varicella vaccine received after the applicant was at least 12 months of age, unless the applicant has had a reliable history of natural disease.*

ITEM 2. Amend subrule **7.4(6)** by adding **new** paragraph **“e”** as follows:

e. At least one dose of varicella vaccine if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease, prior to the applicant’s enrollment in school. This dose shall have been received after the applicant was at least 12 months of age.

[Filed 9/12/03, effective 11/5/03]

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